

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Lisa Domski,

Plaintiff,

-v-

Case No. 23-12023

Blue Cross Blue Shield of Michigan,

Defendant.

/

JURY TRIAL - VOLUME 1
November 4, 2024

BEFORE THE HONORABLE DAVID M. LAWSON
United States District Judge

Theodore Levin United States District Courthouse
231 West Lafayette Boulevard
Detroit, Michigan

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22	transcribed verbatim, as read, and therefore may not	
23	reflect exact quotes from the documents or exhibits.	
24		
25		

1 Detroit, Michigan

2 November 4, 2024

3 9:37 a.m.

4 * * *

5 THE CLERK: All rise. The United States District
6 Court for the Eastern District of Michigan is now in session,
7 the Honorable David M. Lawson presiding.

8 THE COURT: You may be seated.

9 THE CLERK: Now calling the case of Lisa Donski
10 versus Blue Cross Blue Shield of Michigan, Case Number
11 23-12023.

12 THE COURT: All right. Good morning, counsel.

13 The record should reflect we had a conversation in
14 chambers regarding the incapacitation of Juror Number 9.

15 I intend to inform the jury of that circumstance so
16 that they know why one of their number is missing and excuse
17 Juror Number 9, Ms. Wilson, for cause, unless there is an
18 objection.

19 MR. MARKO: No objection, your Honor.

20 MR. HUBBARD: None, Judge.

21 THE COURT: All right. We also had a discussion --
22 the chambers meeting was intended solely to inform the
23 parties of the juror situation, but there was a discussion
24 apparently about -- not apparently -- there was a discussion
25 about demonstrative exhibits.

1 Does anybody want to put anything on the record
2 before we bring in the jury concerning those issues?

3 MR. MARKO: Yes, Judge. Thank you. Jon Marko for
4 the plaintiff, Lisa Domski.

5 We addressed the timeline, which I provided case law
6 and a brief, and it was indicated that I would proceed if I
7 believe that the evidence will show that, which I do.

8 THE COURT: Where did you provide the case law in
9 the brief? I haven't seen it.

10 MR. MARKO: I'm sorry. I have --

11 THE COURT: Did you docket it?

12 MR. MARKO: Yes, your Honor.

13 Can I approach?

14 THE COURT: All right. That's not been provided
15 to me.

16 MR. MARKO: Can I approach?

17 THE COURT: No. Just go ahead and summarize what you
18 want to summarize. I want to get the jury in the courtroom.

19 MR. MARKO: Yes.

20 So the defendants objected to a one-page timeline
21 which they incorrectly and falsely allege is 29 pages in their
22 brief. It's a one-page timeline. I have it right here and
23 I showed it to the Court. It's blown up.

24 And I cited you numerous cases, including from the
25 Sixth Circuit, which says that it's a, quote, "established

1 tradition," end quote, of using demonstrative exhibits such
2 as a timeline. And that's U.S. versus Bakke, which is 942
3 F.2d 977, Sixth Circuit, 1991. Cited a Steven Murphy case,
4 which is Monty versus Crossfire LLC from Judge Murphy of this
5 District. I also cited numerous other cases, including United
6 States versus Morris, which allow for the use of -- counsel to
7 promise what he believes the evidence will show in his opening
8 statement.

9 And the timeline, I can tell the Court, is very short
10 and based on what we believe.

11 THE COURT: No, I have seen it and I understand your
12 argument.

13 Do you have anything further?

14 MR. MARKO: No. Not on the timeline.

15 THE COURT: All right. Anything else you would like
16 to summarize from chambers discussion?

17 MR. MARKO: Yes, your Honor. Defendants raised an
18 issue about Blue Cross Blue Shield's financial status, which
19 is derived directly from their own publications and will be
20 used with witnesses in this case.

21 As you know, this case involves punitive damages.
22 I have cited to this Court on pages 9 and -- 9 and 10 of my
23 brief numerous authorities that the financial status of a
24 defendant is relevant and admissible. As the Sixth Circuit
25 said in Romanski versus Detroit Entertainment: Since a fixed

1 dollar award will punish a poor person more than a wealthy
2 one, one can understand the relevance of the defendant's
3 financial position, which is a Sixth Circuit case from 2005.

4 We talked about in chambers the questions and that
5 were -- that were part of an exhibit which I intend to discuss
6 with the jury. That exhibit has been stipulated to between
7 the parties previously, which I'm going to move after we're
8 done here for the admission of those exhibits, and defendant
9 is going to move for admission of his exhibits in that regard.

10 And I talked to brother counsel who has indicated
11 that he plans on using two exhibits in his opening. As we
12 agreed, there is -- of course, you can use stipulated-to
13 exhibits in your opening. There is no objection on either
14 side to that.

15 And I provided all the demonstrative exhibits to
16 brother counsel pursuant to your court order which required
17 them two business days before trial. They were provided last
18 Thursday. So they have a copy of everything that I plan on
19 using. They did not object to any of those exhibits except
20 the ones mentioned in their brief, which I believe we have
21 addressed here today.

22 THE COURT: Anything else?

23 MR. MARKO: No, your Honor.

24 THE COURT: Thank you.

25 Does the defense wish to summarize anything regarding

1 the chambers discussion?

2 MR. MOODY: We do, your Honor. Thank you. In our --

3 THE COURT: Get closer to the microphone, if you
4 would, please --

5 MR. MOODY: Yes, sir.

6 THE COURT: -- Mr. Moody.

7 MR. MOODY: Judge, in our objections to plaintiff's
8 demonstratives which were filed with the Court we cited a
9 Johnson versus Lexington SNF case which quotes from a Sixth
10 Circuit opinion. What Johnson said is opening is not meant
11 for argument. It's not meant to poison the jury's minds.
12 Demonstratives at opening, when confusing or inflammatory,
13 should not be used. Slides that repeatedly reference disputed
14 allegations or excluded evidence should not be used.

15 In that case, the Court excluded counsel from using
16 demonstratives of that ilk in their opening. And that comes
17 under FRE 103(d) which says that the Court should not --
18 should do its best to not permit admissible evidence to even
19 be suggested to the jury.

20 THE COURT: I presume you mean inadmissible evidence?

21 MR. MOODY: Thank you, your Honor. And that is
22 exactly what I mean.

23 Your Honor, to that end, our objections to six groups
24 of evidence are largely because they are inadmissible
25 evidence.

1 The first is the Donski timeline.

2 And just for clarity, they keep saying that we have
3 identified it as a 29-page timeline. The sentence says:
4 Plaintiff's first demonstrative is a 29-page document
5 containing a self-made timeline.

6 The opening document that they are using is 29 pages.
7 One of those pages is the timeline.

8 And the problem with the timeline for us is that it
9 references an HR recording that the Court is well aware of
10 and the Court said, I don't see the relevance right now. And
11 if you want to try and use it, we're not going to do it in
12 front of the jury, and you have got to sidebar with me. So
13 now they are going to use a timeline that specifically tells
14 the jury about the recording. We don't believe that's ever
15 coming in and we believe that's highly prejudicial for those
16 reasons.

17 The second, your Honor, is the summary of two lost
18 earnings documents. I understood from Mr. Marko that those
19 have been removed, and if Mr. Marko clarifies that, I think
20 we can move from those; is that right?

21 MR. MARKO: Yeah, they have been removed in the
22 opening statement, but I plan on using them later in the
23 case. And those are financial -- I can show you later, Judge,
24 but it's just a financial summary of lost wages.

25 THE COURT: Well, when it comes up, we will deal

1 with it.

2 MR. MOODY: Okay. I think that one is handled.

3 The next group is Blue Cross's CEO salary and Blue
4 Cross's net revenue.

5 Despite what Mr. Marko said, that evidence is not
6 coming in through any witness on any of their witness lists.
7 They are not going to know. That is not going to be evidence
8 in this case. So all that is going to do is inflame the jury
9 and provoke them to want to look outside the facts and issue a
10 larger verdict if they decide to go that way. The evidence is
11 inadmissible and it's irrelevant anyway.

12 The HR transcript and recording, I understand the
13 Court has already ruled on, and I understand that that is out.

14 And finally, the fifth topic is a pie chart
15 summarizing the requests denied and confirmed denied and
16 approved by Blue Cross.

17 The pie chart, it will not come in as evidence
18 because they don't have anyone to authenticate the document
19 that will know the information. So again, it's not going to
20 come in and it's just prejudicial evidence that won't be part
21 of the trial and, again, that would fall back on FRE 103(d).

22 Lastly, your Honor, is the list of accommodation
23 request questions that were never asked. We have briefed
24 this issue, your Honor. We have been before the Court many
25 times on this issue. The Court has already indicated, asking

1 specifically to counsel, how is this relevant if the
2 over-the-counter questions were never asked?

3 Blue Cross doesn't know as it sits here today if they
4 were asked. Yet they are going to use the document to show
5 the jury that those questions exist despite it having no
6 relevance. So we would object to the use of that document as
7 a demonstrative at this time when it won't be evidence or at
8 least the over-the-counter discussion will not be brought up
9 at trial at any point.

10 Mr. Marko even said when we addressed this issue,
11 Judge, I'm taking it out of my case-in-chief. I'll only use
12 it on impeachment.

13 It's out of his case-in-chief, but it's in his
14 opening. That, your Honor, is highly prejudicial. And to
15 me, respectfully, we would ask that the Court not allow it,
16 especially at this time.

17 That's all the issues we have for the record.

18 THE COURT: All right. The demonstrative exhibits
19 with respect to the timeline, I think I saw that timeline, and
20 I believe that it's appropriate to use that as a demonstrative
21 exhibit to summarize what the plaintiff believes the evidence
22 will show and what the issues are in the case, which, of
23 course, is the purpose of an opening statement.

24 Any exhibits, any demonstrative exhibits that
25 reference items of evidence that we have addressed in motions

1 in limine and have been excluded may not be used.

2 If there are interview questions that were not asked,
3 then they should not be mentioned to the jury during opening
4 statement or any other time.

5 If there is a pie chart that references how Blue
6 Cross dealt with a volume of exemption requests, I don't know
7 that that is something that might come into evidence or not.
8 I question the relevance of it. But out of caution, it
9 probably should not be used during opening statement unless
10 the plaintiff's attorney has high confidence that it will be
11 part of the case-in-chief.

12 And I have mentioned that demonstrative exhibits and
13 items mentioned during opening statement are presented to
14 the jury at the plaintiff's peril. That if there are items
15 mentioned that will not be evidence in the case, then the
16 plaintiff runs the risk of a mistrial with associated costs
17 and expenses imposed, or simply a tactical error, which
18 I really have no comment on, which might result from
19 overpromising the jury.

20 That was the discussion in chambers.

21 Mr. Marko, do you have something else?

22 MR. MARKO: Yes. I agree with everything. I agree
23 with your characterization, except for these questions are
24 part of an exhibit that is agreed on, which is defendant's
25 exhibit.

1 THE COURT: You heard my ruling. If you think that
2 is coming in, then it's coming in, and you can summarize it as
3 part of your opening statement as what the evidence will show.

4 MR. MARKO: Understood.

5 THE COURT: Now, are those your items there along the
6 side wall?

7 MR. MARKO: Yes, your Honor.

8 THE COURT: I need that aisle clear. That's where
9 the jury comes in and out.

10 There is a briefcase there, and your colleague that
11 just stood up is in a chair that -- and she will have to move.

12 When we -- after opening statements are completed the
13 lectern is going right there in the corner and that's where
14 witness examination will take place.

15 MR. MARKO: Understood, Judge.

16 THE COURT: So we just need that space.

17 MR. MARKO: Absolutely. We're working on that
18 right now.

19 We would move, pursuant to our previous discussions,
20 for admission of stipulated exhibits.

21 THE COURT: Yes. I would like to do that after I
22 give the jury its initial instructions, and we will do it
23 before the jury so they know that they have been received.

24 MR. MARKO: Understood.

25 THE COURT: In other words, in the jury's presence.

1 MR. MARKO: Understood.

2 MR. HUBBARD: Your Honor.

3 THE COURT: Yes?

4 MR. HUBBARD: Sequestration.

5 THE COURT: Ah, yes. Your motion?

6 MR. HUBBARD: Yes, your Honor. As I think your Honor
7 may well understand that we're moving to sequest any
8 witnessing that may well be testifying in this trial.

9 Obviously we don't want them seeing either of the
10 opening or hearing the testimony or looking at the exhibits
11 that are being brought into the trial before they have an
12 occasion to testify, for the reason that it may well
13 influence, of course, their testimony.

14 I understood from Mr. Marko --

15 THE COURT: That's your motion?

16 MR. HUBBARD: Yes, your Honor.

17 THE COURT: Is there an objection?

18 MR. MARKO: There is no objection. Both ways,
19 obviously, because I notice there are some --

20 THE COURT: Okay. It's a mutual motion?

21 MR. MARKO: Correct.

22 THE COURT: Any objection to the sequestration?

23 MR. HUBBARD: No, Judge.

24 THE COURT: All right. I didn't know "sequest" was a
25 verb.

1 MR. HUBBARD: Well, I have been known to not use the
2 English language perfectly.

3 THE COURT: No, I'm always willing to be educated,
4 and if that's the case, I appreciate it.

5 MR. HUBBARD: I think you got me there.

6 THE COURT: The parties will exclude from the
7 courtroom any witnesses except for those parties necessary to
8 the presentation of the case.

9 Obviously, the plaintiff may stay in the courtroom,
10 and if you have a corporate representative necessary to the
11 presentation of the defense, that person may stay in the
12 courtroom as well.

13 All other witnesses should be excluded, and I'm going
14 to leave to the responsibility of each side -- leave to each
15 side, I'm sorry -- responsibility of ensuring that that order
16 is enforced.

17 THE COURT: Mr. Marko or Mr. Hurwitz, did you make
18 arrangements for a witness room?

19 MR. MARKO: No, your Honor.

20 THE COURT: All right. We're going to see if the
21 attorney conference room is available and we will put your
22 witnesses down there.

23 Is the plaintiff ready for the jury?

24 MR. MARKO: Yes, your Honor.

25 THE COURT: Defense?

1 MR. HUBBARD: Yes, Judge.

2 THE COURT: Bring the jury in, please.

3 Those people standing in the back of the room, either
4 find a seat or step outside.

5 THE CLERK: All rise for the jury.

6 (Jury entered courtroom at 9:53 a.m.)

7 THE COURT: You may be seated.

8 Good morning, ladies and gentlemen.

9 JURORS COLLECTIVELY: Good morning.

10 THE COURT: One of your number has been excused.

11 Ms. Wilson had a medical event over the weekend and she was
12 hospitalized and is unable to continue. So for that reason,
13 we have excused her from the jury in this case.

14 You may recall that when we asked you questions
15 during the jury selection process you took an oath to tell
16 the truth when you answered the questions.

17 We now have another oath to administer for you
18 concerning your duties as a juror in this case. So if you
19 will all stand and raise your right hands.

20 Listen to the oath that Ms. Pinkowski reads to you
21 and answer out loud when she is finished.

22 (Jury sworn at 9:54 a.m.)

23 THE COURT: Thank you. You may be seated.

24 Members of the jury, I want to speak to you briefly
25 about the function of a judge in a civil trial and your

1 function as jurors.

2 You have just been sworn as the jury in this case,
3 and by your verdict you will decide the disputed issues of
4 fact that exist between the parties.

5 I will decide questions of law that arise during the
6 trial, and before you retire to deliberate at the close of the
7 trial I will instruct you on the law that you are to follow
8 and apply in reaching your verdict.

9 My practice is to give you the instructions verbally
10 in court, but also furnish you with written copies of the
11 instructions so that you can have them during your
12 deliberations and follow along as I am giving you those
13 instructions.

14 It's my responsibility to conduct this trial in an
15 orderly, fair, and efficient manner, to rule on questions of
16 law that arise during the course of the trial, and to instruct
17 you on the law that applies to this case.

18 You can look on my function, that is, the function of
19 the Court or the Judge, as that of a referee or an umpire.
20 I have no personal or professional interest in how this case
21 turns out. The outcome will be up to you as the jury.

22 My job is to see to it that only legally admissible
23 evidence is received in this court and to tell you what the
24 law is during and at the end of the trial and to settle any
25 disputes between the attorneys that might arise during the

1 course of the trial.

2 Now, as we mentioned before, the seats that you are
3 in are the seats that you will take whenever you are in the
4 courtroom. Even though there is an empty seat between you,
5 please keep those same seats. And remember that order as you
6 did this morning so that you can file in and it's easier to
7 assume your seats coming into the jury box.

8 Now, you all have juror badges on, and it's important
9 that you wear those badges and keep them visible while you are
10 in the building and even during breaks or if you leave the
11 building and walk around town you have them on as well.

12 The reason is that there are several people in this
13 building and in the vicinity of the courthouse who may be
14 attorneys or witnesses or others who have an interest in
15 seeing this case and it's important that they know you are
16 a juror. Those people involved in the case know that they
17 may not speak to you. In fact, they may not even allow an
18 opportunity to appear if they are -- that they are conferring
19 with you. And it's important that you put the public on
20 notice that you are jurors, so it is important that the badges
21 are worn and visible.

22 Now, I will tell you a little bit more about the
23 staff assigned to every Federal Judge so that you know what
24 they are doing during the course of the trial.

25 As I mentioned earlier, Ms. Twedt is our certified

1 court reporter. She takes down and has been taking down
2 everything that is said in this trial on a small machine
3 called a stenotype machine.

4 Now, there is certainly technology, but the basic
5 stenotype machine emits strips of paper, and those strips
6 of paper contain court reporter notes. She is skilled and
7 trained in that function, and if it becomes important to
8 determine during the course of the trial what an exact
9 question was or what an exact answer was from a witness, she
10 can interpret those court reporter notes on the tape and read
11 it back.

12 If it becomes necessary during or later to determine
13 what went on during the entire trial, then she can prepare a
14 typed written transcript from those notes.

15 I tell you this because those transcripts cannot be
16 produced instantaneously, at least in clean copy, and we don't
17 have that capacity to simply push a button and generate a
18 transcript. So it is important that you pay attention to the
19 testimony as it is presented to you.

20 At the conclusion of the trial sometimes jurors ask
21 what a specific witness said or what testimony came in. We
22 can have the court reporter read that back to you, but it is
23 somewhat of a cumbersome process and it is time consuming.
24 So it's important that you pay attention as the testimony is
25 presented to you.

1 Also, you met our courtroom deputy clerk, Ms. Susan
2 Pinkowski. Her job is to see to it that the business of this
3 Court goes on while I am occupied during this trial.

4 Now, this is obviously not the only case that is
5 assigned to me. There are hundreds of cases assigned to
6 each Federal Judge in various stages of development. And
7 Ms. Pinkowski's job, one of her jobs, is to make sure that
8 those cases move forward even if I am not dealing with them
9 at the time myself.

10 So you will see her in the courtroom. Sometimes she
11 will leave to do some work back in the office. She may come
12 to get you in the morning from the jury room on the fifth
13 floor. She or one of the law clerks will escort you in and
14 out of the courtroom. And she may come in and hand me certain
15 papers to sign, but usually it has nothing to do with this
16 case and that activity should not pose a distraction to you
17 from paying attention to the presentation of the evidence.

18 In addition, there are two law clerks that are
19 assigned to every Federal Judge. Mr. Michael Shaffer is our
20 senior law clerk. He is not in the courtroom right now, but
21 you may see him from time to time. Mr. Adam Beyer is our term
22 junior law clerk and he is -- has primary responsibility for
23 assisting me on this case.

24 When I say that these individuals are law clerks,
25 that's really somewhat of a misnomer. They are attorneys.

1 They have graduated law school and passed the bar.

2 And they stay with me for a period of time. They
3 perform a number of functions, one of which is to do research,
4 so that if I instruct you on the law at the -- during the case
5 or at the conclusion of the trial it is absolutely current and
6 updated law.

7 The law is in a state of flux and sometimes it
8 changes daily. So when I give you the law I want to be sure
9 it is current and accurate.

10 Again, they may spend some time in the courtroom or
11 come and go or hand me papers to sign and, again, that should
12 not be a distraction to you.

13 Now, the building that we're in was built in 1932,
14 during the -- it began construction during the Herbert Hoover
15 Administration and it was completed during Franklin
16 Roosevelt's first term. It was constructed before the advent
17 of modern air-handling equipment, I can tell you that.

18 We have done some pretty extensive updates to this
19 historic structure, but sometimes the building engineers get a
20 little too enthusiastic about the heat or the cold, so I would
21 advise you to bring a sweater that you can put on or take off
22 at your -- as your comfort dictates, and you may bring that
23 into the courtroom if you like.

24 The hours that we are in session are from 8:00 a.m.
25 to 5:00 p.m., but I have given you some schedule as to how

1 we're going to be conducting this trial. We have modified
2 that slightly from the schedule we gave you last week. We
3 will continue this case until 12:30 p.m. today and then there
4 is other court business that I must attend to and we will
5 adjourn around that time.

6 Tomorrow we will begin at 10:30 and continue through
7 4:00. We will take a lunch break. We will begin at 8:30 on
8 Wednesday and 9:30 on Thursday. That schedule will be posted
9 in the jury room for you.

10 Now, these times are approximate, and what we usually
11 do is try to take a break at a logical point in the case. We
12 will be taking breaks during the day as well.

13 For example, a logical breaking point would be after
14 the conclusion of a witness's testimony or between one side's
15 examination and the other side's examination.

16 As I mentioned before, and I do thank you for being
17 attentive to this today, we want to have you in the jury room
18 on the fifth floor, oh, 15 to 30 minutes before we're to start
19 in the courtroom so that we can all have you assembled as a
20 group and bring you up to our jury room and we can start on
21 time.

22 Now, there should be water bottles in front of you.
23 Do each of you have some?

24 We will be taking these short breaks during the day.
25 When you return to the jury room, if you do return to the jury

1 room, you should stay in the jury room unless I tell you that
2 our break will be long enough for you to leave the jury room.
3 Don't leave the jury room without the Court's permission.

4 We have now nine jurors. A minimum of six jurors
5 is required to decide this case. We empanel more than the
6 minimum requirement because, as we know and as we have seen,
7 there are -- in the ordinary experiences of life people do get
8 sick or have accidents or emergencies.

9 We empanel what some people refer to as extra jurors;
10 however, none of you is an extra juror. All of you will be
11 deliberating on the case at the conclusion of the trial when
12 you attempt to reach a verdict.

13 Now, I would like to explain the general order of the
14 procedure in the trial.

15 First, when I'm finished with these instructions
16 the attorney for the plaintiff will be permitted to make an
17 opening statement. An opening statement is an opportunity
18 for the plaintiff to outline her theory of the case and what
19 she believes the evidence will show.

20 When the plaintiff is finished with the opening
21 statement, the defense has an opportunity likewise to make
22 an opening statement for the same purpose or the defense may
23 choose to reserve it and give it later on in the trial.

24 The opening statements are not evidence. They are
25 only intended to assist you in understanding the viewpoints

1 and the claims of the parties. You will be called upon to
2 decide the case based on the evidence and not the statements
3 or arguments of the lawyers.

4 After opening statements we will begin taking the
5 evidence. The attorney for the plaintiff will present the
6 evidence first. He may do that by calling witnesses or
7 offering exhibits. Exhibits are documents or physical objects
8 that you may consider when you decide the case.

9 After a witness is called, the witness will be sworn
10 to tell the truth. The witness will sit right over here in
11 this witness box, and then we will proceed by question and
12 answer.

13 The person calling the witness will, first of all,
14 conduct the examination and ask questions and we call that
15 direct examination.

16 When that person is finished the attorney for the
17 opposite side will have the opportunity to ask the witnesses
18 questions and we call that cross examination.

19 We allow cross examination in order to test the truth
20 and accuracy of the witness's testimony or to elicit testimony
21 that might be favorable to that side.

22 After the direct and cross examination and possibly
23 redirect and recross examination the witness will be excused,
24 the plaintiff will call another witness, and we will repeat
25 the process until all of the witnesses have testified for that

1 side.

2 Once that occurs and the exhibits are offered and
3 received the plaintiff will rest.

4 At that point if the defense has not made an opening
5 statement the defendant may do so then. And then the defense
6 may present their case by the same fashion, calling witnesses,
7 conducting a direct examination, the plaintiff may conduct a
8 cross examination, and the defendant may offer exhibits as
9 well.

10 Once the defense has completed its presentation it
11 may -- the defense will rest and we may have an additional
12 presentation by the plaintiff for rebuttal witnesses that are
13 called who may challenge new matters that were brought up by
14 the defendant, although that's not always a circumstance in
15 the case.

16 Once the testimony is presented then I will give you
17 some preliminary instructions that I mentioned before on the
18 law, both verbally and in writing, and then we will have what
19 we call closing arguments.

20 The closing arguments are presented by the attorneys
21 to assist you in understanding the evidence and the theory of
22 each party.

23 Once again, however, the closing arguments are not
24 evidence in the case. They are merely intended to assist you
25 in understanding each party's position.

1 When you decide the case, you must decide it only on
2 the evidence itself.

3 Then following the closing arguments I will give you
4 some final instructions on the manner of your deliberations
5 and the possible verdicts that you may return and then you
6 will retire to the jury room to deliberate on your verdict.

7 You will do that by applying the law as I give it
8 to you to the facts as you determine them to be.

9 Your function -- the function of the jury is to
10 determine the facts, and you are the sole and exclusive judges
11 of the facts. You alone will determine the weight, the
12 effect, and the value of the evidence as well as the
13 credibility of the witnesses.

14 You must consider and weigh the testimony of all the
15 witnesses who appear before you and you alone are to determine
16 whether to believe any witness and the extent to which you
17 think a witness should be believed.

18 It is your responsibility to consider any conflicts
19 in the testimony which may arise during the course of the
20 trial.

21 Your decision as to any fact is final.

22 On the other hand, it is your duty to accept the law
23 as I give it to you.

24 Your determination of the facts of this case must
25 be based only on the evidence that is offered and received in

1 this courtroom.

2 The evidence consists of the sworn testimony of
3 the witnesses. It may also include exhibits, which may be
4 documents or physical objects, as I mentioned before. It
5 may also include some things which I will simply instruct
6 you to consider as evidence.

7 As to evidence, the questions that the lawyers ask
8 the witnesses are not themselves evidence. It is the answers
9 that the witnesses give that provide the evidence in the case.

10 Your function as the jury, of course, is equally as
11 important as the function of the Court and the attorneys.

12 You should give careful attention to the testimony as
13 it is presented for your consideration. You should keep an
14 open mind and not form any opinion or express any opinion
15 about the case until after you have heard all of the evidence,
16 the closing arguments, and the instructions on the law, and
17 until you have retired to the jury room to deliberate on your
18 verdict.

19 From this point forward you must not discuss the case
20 with anyone, not even members of your own family or even your
21 fellow jurors. It would be unfair to discuss the case among
22 yourselves or with family or friends before you retire to
23 consider your verdict.

24 So you may tell your family and friends that you have
25 been selected as a juror, but then you must tell them that

1 you are under instructions from the Court that you are not to
2 discuss the case with them until I permit you to do so.

3 After the case is submitted to you for your
4 deliberations you still must discuss it only when I instruct
5 you to do so and only in the jury room and in the presence of
6 all your fellow jurors.

7 When this trial is over you may discuss the case with
8 anyone you wish, but until that time we ask you to control the
9 natural desire to discuss the case both here and at home.

10 The only information that you will receive about this
11 case will come to you while you are all together as a jury
12 in the presence of the Court and the attorneys and all the
13 parties involved. You must not consider any information which
14 may come to you outside or from outside the jury room.

15 This trial, like all federal trials, is governed by
16 rules that have to do with the admissibility of evidence.
17 These rules include the Federal Rules of Civil Procedure and
18 the Federal Rules of Evidence.

19 These rules have been debated and established by
20 Congress and the United States Supreme Court over many
21 years. Many of the rules have to do with the reliability or
22 unreliability of certain evidence. Evidence that has been
23 determined to be unreliable may not be admissible and may not
24 be considered by you as a jury.

25 In many cases I rule on the admissibility of evidence

1 before the trial even begins, so it is extremely important
2 that you follow the instruction that you may only consider
3 the evidence that is admitted into this courtroom during the
4 trial.

5 So you must not read any newspapers articles in print
6 or online, if there are any, relating to this trial. You must
7 not watch or listen to any television or radio commentary or
8 any accounts, if there are any, about this trial while it is
9 in progress. You may not visit any scene that is mentioned in
10 the evidence in this case.

11 If it should become necessary that you should visit
12 a scene, which is entirely unlikely in this case, but if it
13 should become necessary, you will be taken as a group under
14 the supervision of the Court.

15 You must not consider as evidence any personal
16 knowledge that you might have of any scene or place mentioned
17 in the evidence.

18 You must not make any investigation of any kind on
19 your own or conduct any experiments of any kind.

20 I know that many of you are technologically adept.
21 You use Smartphones and tablets and have access to the
22 internet and other tools of technology. However, you should
23 not or may not consult any of those sources about anything
24 having to do with this trial or any of the issues in the case
25 while the trial is underway.

1 You also must not talk to anyone about the case or
2 use these tools to communicate electronically with anyone
3 about the case. These include your family and friends.

4 So you may not communicate with anyone about the case
5 on your phones or on your tablets or through email or any text
6 messaging or chat sites or blog or post anything online
7 regarding this case, become active in any internet chat room
8 or by way of any other social networking websites.

9 You should not consult any dictionaries or reference
10 materials, search the internet, websites, blogs, or use any
11 other electronic tools to obtain information about the case
12 or to help you decide the case. Please do not try to find out
13 any information from any source outside the confines of this
14 courtroom.

15 You may not permit anyone to communicate with you or
16 accept any communications that are directed to you having
17 anything to do whatsoever with this trial. If anyone attempts
18 to contact you about this case you must report that to me
19 immediately.

20 The issues regarding obtaining information from
21 outside the courtroom are very serious, because if that
22 happens it could result in having to declare a mistrial and
23 having to begin again with the attendant costs.

24 Now, a trial follows long-established rules of
25 evidence and procedure and the attorneys are trained in these

1 rules, and from time to time they may make objections or
2 motions.

3 Now, I will rule on these objections and motions and
4 most of the time I will do that in your presence. You should
5 not conclude from any of my rulings that I have any opinion on
6 the case or that I favor one side or the other. If I sustain
7 an objection to a question and do not permit a witness to
8 answer you should not guess what the answer might have been
9 nor should you draw any inference from the question itself.

10 At times the attorneys and I are required to take up
11 matters of objection and motions outside of your hearing. We
12 will take care of those matters maybe at the bench, and if so,
13 the lawyers will come up here and we will have a sidebar
14 conference.

15 When we do have a sidebar conference I will activate
16 what we call our white noise system to keep the conversation
17 from traveling across the courtroom. I'll turn that on for
18 you now so you know what it is.

19 (White noise demonstrated.)

20 THE COURT: And that's the white noise system.

21 Some people consider that to be irritating and,
22 frankly, so do I. We did have a juror once that listened to
23 the white noise system and thought that it sounded like waves
24 crashing on the beach. Now that is -- that is a very positive
25 attitude.

1 So if we activate our white noise system, then just
2 consider that and kick back and we will get back to you as
3 soon as we can.

4 The sidebar conferences usually have to do with some
5 procedural issues that are not directly involved in the
6 information that you need to decide the case.

7 Sometimes these issues are a little bit more
8 complicated, and under those circumstances, we may excuse
9 you from the courtroom to go back to the jury room, have our
10 arguments on the record, make the determination, and then
11 bring you back to continue the trial.

12 Now, I don't have a way to predict when any of these
13 things might arise, but I will pledge to you that we will
14 attempt to decide these issues as quickly as possible so that
15 we can get you back into the courtroom and have you hearing
16 the testimony so you can complete the case and get on with
17 your lives.

18 Now, I may give you additional instructions during
19 the course of the trial, and I will give you detailed
20 instructions at the end of the trial, as I mentioned before.

21 All these instructions are important, because
22 together they state the law that you are to apply to the case.

23 You will be permitted to take notes during the trial.
24 Of course, you are not obliged to take notes. And if you do
25 not take notes, you should not be influenced by the notes of

1 another juror but rather you should rely on your own
2 recollection of the evidence.

3 Also, notetaking should not distract you from what
4 you are here to do; that is, to pay attention to what happens
5 in court and listen to the testimony of the witnesses.

6 Now, your notes are not evidence in the case and
7 they should not take precedence over the independent
8 recollection of the evidence received. Notes are only an aid
9 to recollection and are not entitled to any greater weight
10 than the actual recollection or the impression of each juror
11 as to what the evidence actually is. Any notes taken by a
12 juror should not be disclosed to anyone other than a fellow
13 juror.

14 You all were provided with notebooks. I suggest you
15 write your names in them, in addition to your juror numbers.
16 And those notebooks can be used by you when you're in the
17 courtroom. They should stay in the jury room overnight. You
18 should not take the notebooks home with you.

19 At the conclusion of the trial you may take your
20 notes with you or, if you leave them in the notebooks, the
21 notes will be shredded. They will be destroyed and no one
22 will have access to them, so you can be confident that they
23 are your private notes.

24 During the trial we will take certain recesses and
25 you will be permitted to separate and go about your personal

1 affairs if I take a recess long enough that permits you to
2 leave the jury room.

3 During recesses, whether you remain in the jury room
4 or not, you should not discuss the case among yourselves or
5 with anyone else and you should not let anyone say anything to
6 you or in your presence about this case.

7 If anyone does try to say anything to you or in your
8 presence about the case you should tell them that you are a
9 juror sitting on this trial and ask them to stop. If they
10 persist and do not stop, then you should advise me immediately
11 upon your return to the jury room about that encounter.

12 Now, during the trial I would like you to let me know
13 by raising your hand if you cannot hear a witness or see what
14 is being demonstrated.

15 If I am distracted and don't see you raise your hand,
16 feel free to speak up so that we are confident that you are
17 able to see and hear what's going on.

18 That concludes my preliminary instructions. We will
19 now hear from the plaintiff.

20 Mr. Marko, are you prepared to address the jury?

21 MR. MARKO: I am, your Honor.

22 THE COURT: You may proceed.

23 MR. MARKO: Thank you.

24 Good morning. Good morning, ladies and gentlemen.

25 THE COURT: Do that from the lectern, please.

1 MR. MARKO: Your Honor. We have to move first --

2 THE COURT: Oh, I'm sorry. You had that business
3 to take care of. I apologize.

4 MR. MARKO: That's okay, Judge. It's been a long
5 morning.

6 We move to admit Plaintiff's Exhibits 1 through 60 at
7 this time. My understanding is every one is stipulated to
8 except for Exhibit 46, 48, and 50 through 54.

9 THE COURT: I'm sorry, 46, 48, and what?

10 MR. MARKO: 50 through 54. So 50, 51, 52, 53, and
11 54.

12 THE COURT: 50 through 54.

13 MR. MARKO: Yes, your Honor.

14 THE COURT: Any objection to admission of Exhibits 1
15 through 45, and 47, 49, and 55 through 60?

16 MS. MOODY: Yes, your Honor. Blue Cross objects
17 to --

18 THE COURT: Well, wait a minute. I thought that we
19 had an agreement.

20 MR. MARKO: So did I. I talked to Mr. Hubbard last
21 week.

22 If I made a mistake on an exhibit, please let me
23 know.

24 MR. HUBBARD: Mr. Marko, is Exhibit 47 the HR
25 recording?

1 MR. MARKO: No. Exhibit 46 is the HR recording. And
2 that's why I said you didn't agree to it.

3 THE COURT: Exhibit 46 is listed as a Facebook social
4 media post.

5 MR. MARKO: I'm sorry. They got moved. You're
6 right, brother counsel. I apologize. 47 is the HR audio and
7 video recording. 46 -- so we will move --

8 THE COURT: Is there an objection to 46?

9 MS. MOODY: There is no objection to 46,
10 your Honor --

11 THE COURT: All right.

12 MS. MOODY: -- to the extent we're working from
13 Docket 103.

14 THE COURT: I don't know about a docket. You were
15 ordered to submit to me your exhibit lists, and I'm working
16 off the exhibit lists that were submitted to the Court.

17 MR. MARKO: So 46 is also their exhibit, so we can
18 cut to the chase. I'm not objecting to their exhibit. I'm
19 assuming they are not objecting to the same one.

20 THE COURT: Okay. Let's do it this way.

21 Is there any objections to Exhibits 1 through 46?

22 MS. MOODY: Yes, your Honor. There are objections
23 to Exhibits 13 and --

24 THE COURT: Apparently we don't have an agreement,
25 Mr. Marko.

1 I'm going to proceed with opening statements. We
2 will take a break after the opening statements are concluded
3 and maybe we can get this straightened out.

4 MR. MARKO: Understood, Judge. Thank you.

5 THE COURT: All right. You may address the jury.

6 MR. MARKO: Thank you, your Honor.

7 I want to first start out by thanking you. I know
8 this is a tremendous sacrifice. I know many of you have to
9 drive far and to come downtown and to be here and take time
10 out of lives.

11 I'm going to respect that. I'm going to move as
12 quickly as I can. I promise. I am longwinded. Okay? I'm
13 going to do the best to cut that down. I'm going to do the
14 best to move this quickly to respect your time.

15 But I also need to do justice. Lisa has been waiting
16 here a really long time to get here to present our case to
17 you. So I'm going to try to respect everybody in this case.

18 And this is a really important case. This is a very
19 important -- we're here in a federal court. Okay? There is a
20 lot of other courts. You have courts down the street from
21 your house. You have district courts. There's circuit courts
22 in your county. We're here in federal court for the Eastern
23 District of Michigan.

24 This is a case about your right to practice your
25 religion or to not practice any religion at all, to say

1 I don't -- I maybe don't believe in -- I'm agnostic or I'm
2 atheist. This is your -- this case is about your right, your
3 God-given right as an American, to practice your religion.
4 Okay?

5 And a corporation does not have a right, under the
6 law, to tell you what to believe in or what to do with your
7 body or what to do with your mind. And the Judge is going to
8 instruct you on the law.

9 And that's what happened in this case. This is a
10 simple case. Lisa Domski was terminated after working at
11 Blue Cross Blue Shield for 38 years. She worked from home.
12 She wasn't even out there in public. She worked from home.

13 And they terminated her after 38 years of service and
14 they made -- they gave her a choice. You can choose to give
15 up your faith and give up your religion and give up your
16 beliefs or you can choose between that and your career.

17 And she chose her faith over her career that she had
18 worked her way up. She was making almost -- without a college
19 education, she was making nearly \$100,000 a year that she had
20 worked from going to Woodhaven High School, from coming from
21 nothing. And she said, I am not going to give up my faith.
22 I'm not going to deny my faith.

23 You may disagree with her faith. You may say that's
24 not my belief. You may have different beliefs about the
25 vaccine. That's okay. That's okay. Because that's your

1 right. That's your right to believe that. It's your right
2 to believe in whatever God you want to believe in or no God
3 at all.

4 And the government and certainly a corporation has no
5 right to tell you that you have to choose between that faith
6 and your career and your livelihood and your family.

7 You may say, well, you know what, I got vaccinated or
8 I believe there is public safety. That's fine. That's fine.
9 There's other options available. She was working from home.

10 And when you hear about why she believes what she
11 believes, you hear about how sincere her belief is, there is
12 no witness in this case who is going to tell you that she is
13 not sincere in her religious beliefs. And she was terminated
14 because of those beliefs. I promise you that you're going to
15 hear from friends, family, from a priest, from everyone who
16 knows about it.

17 Let's talk a little bit about how we got here and why
18 we're here in federal court.

19 Now, hopefully my electronics work here, which they
20 are already not working.

21 So I'm going to show you some exhibits in this case
22 and they have already been agreed on.

23 Are we good here, Craig? No?

24 This always happens at the worst time.

25 THE COURT: Members of the jury, some of our

1 electronic tools allow us to present some visuals. You have
2 flat-panel monitors in front of you there. I would like the
3 jurors in the front row to put one hand on each side and pull
4 them up so that you can see them and jurors in the back row
5 can see them as well.

6 MR. MARKO: All right. Hopefully the last time,
7 but probably not. But I want to be able to show you this
8 evidence, because I'm going to prove to you these things that
9 I'm telling you in opening statement.

10 I'm going to get down, they are going to get up, and
11 they are going to tell you some things, and I'm going to
12 address those, but we need to --

13 THE COURT: Excuse me, Mr. Marko.
14 Are you able to see the images?

15 JURORS COLLECTIVELY: Yes.

16 MR. MARKO: Thank you so much, Judge.

17 And we're talking about, how did we get here? How
18 are we in a federal court in the United States of America
19 in front of a judge who was appointed by the President of the
20 United States? And that's how important this is.

21 And Judge Lawson told you last week, when we met for
22 the first time, about how this all started. It all started in
23 England with people fighting, because they had to fight for
24 their right to a trial by jury, the same rights that we're
25 here under today.

1 And in England, as many of you probably know, and as
2 Judge Lawson explained, they had to get together and demand
3 these rights from the king. Because back then if the king
4 happened to be a different religion than you, you know,
5 whether he happened to be Catholic at the time or Anglican or
6 Protestant, you could be in big trouble if you didn't happen
7 to be the same religion as the king.

8 And there was inquisitions, and people's houses
9 were broken into, and people were killed, and people died for
10 these rights.

11 So a lot of people came to America who were
12 persecuted in England. And one of the main reasons was
13 freedom of religion. And it was so important to our founding
14 fathers, this freedom of religion, that in the Bill of Rights,
15 the very first amendment, they put the freedom of religion,
16 the freedom of religion for everybody.

17 They didn't say you have to be Catholic. They said
18 you have the freedom to practice whatever religion in your
19 heart you want to be. Whatever religion that is, you want to
20 be Protestant, that's fine. You want to be a Sikh, that's
21 fine. You want to be Catholic, that's fine. You want to
22 believe in nothing, that's fine.

23 But the government can't tell you how you are going
24 to think or how you are going to believe. And the very First
25 Amendment, passed in 1789, 1789, Congress shall make no law

1 respecting an establishment of religion or prohibiting the
2 free exercise thereof.

3 And that's why we're in a federal court, because
4 you're going to hear about the laws that were passed.

5 Because it's not Judge Lawson who makes a decision
6 in this case. The founders said we only are going to trust
7 a jury to protect our community from the tyranny of others,
8 corporations and the government. That's what they believed.
9 And that's why we're here.

10 You have to make a decision at the end of this case,
11 because you are the only people that can enforce the law as
12 it relates to this case. You are the only people. Not the
13 government, not even Judge Lawson, and not -- certainly not a
14 corporation. Certainly not a corporation.

15 So let's talk about what happened.

16 So in -- so the First Amendment is passed.

17 And I have a timeline that I'm going to show you guys.

18 But in 1964, President Lyndon Johnson passed -- he
19 signed -- it was a bipartisan bill. Everybody came together
20 and said we need to protect these rights for every single
21 American. And he passed what's called the Civil Rights Act
22 of 1964.

23 It was signed and it was a big deal, because that
24 same law from 1964 is the same law that we're here under today
25 in a federal court. And they said that if your rights are

1 violated, you have a right to seek protection in a federal
2 court of law before a federal judge just like Judge Lawson and
3 a jury just like this. And this protects everybody.

4 And it was a big deal back then. And I'll show you
5 the law. The law protects people's religious beliefs. It
6 protects your race. It protects if you are black, white,
7 Asian, whatever. It protects every single person in this room
8 from being discriminated against not for the content of their
9 character or not because of their ability to do their job, but
10 because of things that are discriminatory and that violate our
11 rights. And that's what was passed. And that's why we're
12 here.

13 And you know, tomorrow is the election. All right?
14 And your vote, if you vote, is going to -- or if you already
15 voted -- is going to be 1 in about 150 million. Okay?
16 150 million.

17 Your vote in this case is going to be 1 in 9. And
18 you're going to have an opportunity at the end of this case
19 to do justice for Lisa Domski, to enforce the laws that our
20 founding fathers established and that the Civil Rights Act of
21 1964 established.

22 It's a big deal. This is an important case that's
23 going to have implications beyond this courtroom, beyond Lisa
24 Domski, and beyond the community.

25 Let me tell you a little bit about Lisa, so you guys

1 can understand how she got here and how we're all here having
2 to take you out of your lives. Okay?

3 Lisa Donski grew up in Detroit. And you're going to
4 hear that she had a dysfunctional family. Her mother was very
5 abusive. And she had to raise -- she was one of, I believe it
6 was, six, and she had to raise and help her brothers and her
7 sisters, and it was very abusive.

8 It was so bad that at one point Lisa had to go into
9 the foster care system for a little bit. Okay? And Lisa's
10 way to escape this horror and this abusive family was to go
11 to church. She started going to church and she found safety
12 and comfort in the church. And it wasn't even a Catholic
13 church back then. She went to, I believe it was, a Baptist
14 church back then. But she found comfort in the church. And
15 so she escaped this kind of hell that she was living in by
16 going to church and meeting people at church and going with
17 her family. She prayed a lot.

18 She went through some very difficult times. You're
19 going to hear that her sister died of drugs. Her sister had
20 substance abuse problems and died. And when her sister --
21 before her sister passed away, she became pregnant, and her
22 sister wanted to have an abortion.

23 And her sister was not able to raise that child. And
24 Lisa said, I'm going to help you. I don't want you to have to
25 do that. I don't want you to have to do that, just because

1 you're not able, because of your problems. And Lisa raised
2 that child. And you're going to hear from him in this case.
3 She raised him and helped him grow up and become a productive
4 person. And she is -- and in her words, she saved him. Okay?

5 Now, this case isn't about your beliefs on abortion.
6 This is not what this case is about. But it's about Lisa's
7 right to have her beliefs, just as you all have the right to
8 have your own beliefs and not be judged, not be told you can't
9 go to work because of those beliefs.

10 Lisa eventually converted to Catholicism. Okay? And
11 you're going to hear she had a wonderful daughter named Alyse
12 who you're going to hear from in this case.

13 She met Larry. This gentleman on the far right of
14 the screen is Larry. You're going to hear from Larry.

15 And Lisa made a choice to convert to Catholicism,
16 which it's a lot easier if you're just born and baptized, you
17 know, like I was as a baby. To convert, you have to make a
18 conscious decision. She had to go through what's called RCIA.
19 She had to go through the church process. And she had to make
20 a conscious decision to join the Catholic Church. And she
21 did that because Larry was Catholic. She had a strong belief
22 in Catholicism, and she loved -- and it goes back to her
23 childhood -- she loved the safety and the comfort that
24 religion gave her, and it gave her life purpose.

25 And you're going to hear from her. Look, this is

1 not a judgmental person. So if you're thinking -- you know,
2 there's all kinds of different types of people in terms of
3 religion. She is not a judgmental person. And she is going
4 to be the first person to tell you, what you believe is your
5 choice. But please, what I believe, please respect, it's also
6 my choice.

7 And you're going to hear that she would have
8 Thanksgiving community dinners for the impoverished. She
9 would throw -- through her faith and through the church, she
10 would have dinners to give to the people who were needy and
11 who were not able to eat for themselves on Thanksgiving. And
12 she lived by the word of her faith.

13 And she sent her daughter Alyse to Catholic school
14 because she wanted her to have that foundation which was,
15 again, her choice. It was her choice that she was making
16 in her life.

17 She had a -- you're also going to hear that part of
18 her beliefs is she had a very difficult time getting pregnant.
19 In fact, she had a miscarriage and it was very traumatic for
20 her. And so it was very important, when she had her daughter,
21 Alyse, to be able to be a role model and to be able to help
22 Alyse not go through the same abuse and torment that she went
23 through as a child.

24 Here's -- this is -- she became a eucharistic
25 minister of the holy communion, where she -- you're going to

1 hear all about her church activities. You're going to hear
2 all about them. I'm not going to go through a list up here.
3 It's not like a resume; right? It's not -- you can't -- you
4 know, religion is a difficult thing; right? It's like, how do
5 we do a litmus test for if you're religious or not?

6 But you're going to hear that's essentially what Blue
7 Cross did in this case. Let us do a 15-minute interview with
8 you and we will do a little inquisition, and we're going to
9 determine -- we're going to be the judges, a corporation,
10 of whether you are honestly religious or not. Okay? That's
11 what they did in this case.

12 But you're going to see that even with that test, she
13 would pass with flying colors. She was -- she was -- this
14 isn't someone who just, you know, said, I want to be religious
15 because I don't want to get vaccinated. This is somebody who
16 lived by this her whole life, since she was an abused little
17 girl, she lived by this.

18 She became a -- she got married in the church.
19 She -- her supervisor at Blue Cross was the godmother of her
20 child, you're going to hear in this case.

21 So let's talk about what happened. So let's talk
22 about Blue Cross a little bit. Okay?

23 We all heard them voir dire everybody. Had a lot
24 of opinions on Blue Cross. But let's talk about Blue Cross.
25 All right?

1 Blue Cross is all over the state of Michigan. It is
2 a big corporation. Okay? You're going to hear, according to
3 their own public financial documents, that in 2022 Blue
4 Cross's total revenue was 32.8 billion with a B, billion
5 dollars. And just to, you know, take that down a little
6 bit, that's 32,000 800 million dollars. 32,000 800 million
7 dollars. Okay?

8 And Lisa began working -- Lisa, you're going to hear,
9 she worked her whole life. She worked since she was 13 years
10 old. See babysat. She worked at a doctor's office.

11 And Lisa began working for Blue Cross in 1984. 1984,
12 she began working for Blue Cross Blue Shield. And you're
13 going to hear she worked there consistently, she took a
14 little break when she had her child, but she worked there
15 consistently for 38 years. 38 years she worked there.

16 And you're going to hear that she was an awesome
17 employee. You're going to hear that -- I know some of these
18 are hard to see, but she worked her way up from the bottom at
19 Blue Cross over the years. And this is her résumé. And we're
20 going to go through it. But she worked her way up there
21 and she kept getting promoted and promoted and promoted and
22 promoted. She stayed after hours. She did extra work.

23 You're going to -- you're going to hear from her.
24 She is not going to come in here and bad mouth Blue Cross,
25 because she loved that job. She loved her job. She'll tell

1 you she would go and clean toilets for Blue Cross if that's
2 what they asked her to do. She would do anything for Blue
3 Cross except deny her faith. Except deny her faith. It's the
4 one thing she wasn't willing to do.

5 She worked her way all the way up. You're going to
6 see over ten promotions that she worked her way up through.
7 And she is going to take you through this. And so she became
8 an IT Specialist. All right?

9 Now we're kind of getting to when COVID hits; right?
10 We all remember. It's not a fun time. But she was actually
11 working from home before COVID hit. So before COVID even hit,
12 Blue Cross said, you are such a great employee, you have given
13 so much to us, you can work from home. You can work from
14 home. Because she was in IT and she did a stellar job.

15 And we're going to show you, we have records going
16 back -- this is -- this is Lisa and she -- this is when she
17 was at the office a little while ago, but this was when she
18 was at the office and she was getting recognized for some of
19 her stellar work at Blue Cross and she loved it. She loved
20 her work. And she was given certificates of achievement,
21 five years, ten years. She was somebody that they would
22 have -- that they should have held onto.

23 Let's take a look at what her own -- her own bosses
24 said about her. Here's 2019.

25 Now look, we have got records going back to 1984.

1 I'm not going to show them all to you. But let's just go look
2 at the last four years. This is what they said.

3 They said that she was a role model. It's a pleasure
4 to work with Lisa. She is a great role model for the team.
5 She is proactive. She is engaged and involved.

6 It says that Lisa, in 2020, we look to get her more
7 involved in financial goals and professional development
8 goals. Our team would not have been as successful without
9 Lisa Donski.

10 This is from her own supervisor.

11 We have more.

12 Lisa did a phenomenal job of providing support to me
13 and the team. She is a role model, because you know when you
14 give a task to Lisa, she is going to follow through and follow
15 up as needed.

16 And then they gave her a thing -- here's -- here's
17 the rankings that they can give you. It goes all the way from
18 needs improvement to being a role model. Her own supervisor
19 characterizes her as a role model employee. A role model
20 employee.

21 And there is not a single person there they could
22 find to bring in here to tell you that she was a bad employee.
23 This is not a case where you're going to hear, oh, she was
24 messing up all over the place. She had problems. She made
25 something up so she could go to court in front of a bunch of

1 strangers in a federal court. You're not going to hear a
2 single person say a bad thing about her performance, because
3 we have records going back to 1984, and they show that she was
4 a stellar role model employee.

5 And we have more. We can -- we have got role models.
6 Just run through these, Craig.

7 Because fully, fully, every single review is going to
8 be positive that you're going to see in this case.

9 Here's another one.

10 In addition, Lisa has been involved in taking
11 advantage of professional development opportunities. She
12 was at the Ronald McDonald House where she volunteered and
13 coordinated and organized the event. Lisa provided the same
14 level of excellence to the team's volunteer events as she
15 does with her day-to-day work and commitments.

16 We have -- again, we have in 2021 -- now 2021,
17 remember, this is after COVID hit, because COVID hit in March
18 of 2020, we're really hit, hit. Okay? In 2021, so after
19 COVID has already been out for a year, she is still getting
20 stellar reviews.

21 Lisa has done a great job of supporting our
22 divisional talent plan. Lisa is a key resource. That's what
23 they called her, a key resource. She is a valued employee in
24 our organization.

25 These are the words you're not going to hear from

1 these -- from these people in this case, but these are the
2 words of Blue Cross management as it relates to Lisa.

3 And it continues. And we can go through these. I'm
4 not going to waste your time. You understand and we will have
5 all these as exhibits for you.

6 So Lisa is doing great. All right?

7 So what happened? So what happened? Okay?

8 Why in the world are we here if you have this
9 wonderful employee who has been there for 38 years?

10 Well, COVID happened. Okay? And there's three
11 vaccines available in Detroit. Remember when the vaccines
12 came out, it was like, what's going on? It was a lot of
13 confusion. There was, are they safe? You hear all these
14 different things about the vaccines.

15 There was three vaccines available in Detroit that
16 you could get. There was a Johnson & Johnson vaccine, there
17 was a Moderna vaccine, and there's a Pfizer vaccine. All
18 right?

19 Now, what's the problem for Lisa getting this
20 vaccine? It's undisputed that the Johnson & Johnson vaccine
21 used aborted fetal cells in all phases of development. So
22 in researching it, and in developing it, and in producing it.

23 So Lisa said, I can't do that. She did some
24 research, you're going to hear. She said, that goes against
25 my belief.

1 You may disagree with her. You may say that's a
2 stupid belief. And you have a right to believe that. You
3 have a right to believe that. But she has a right to believe
4 in accordance with her conscience and with her soul that
5 that's wrong. And nobody can tell her, not the government,
6 not a corporation, that she needs to change her mind or she
7 gets fired or she goes to jail or she has some other thing.
8 She has a right to believe that.

9 Moderna and Pfizer vaccine, Moderna and Pfizer, it's
10 undisputed, used fetal cells in the development process of the
11 vaccine. Fetal -- aborted fetal cells were used, which come
12 from, like, the '60s and '70s when they started using some of
13 them. And then when they developed these vaccines, they used
14 them.

15 So, well, what's the problem? So on October 12 of
16 2021, Blue Cross begins discussing having a mandate, a forced
17 mandate of their entire work force. Okay? They said we are
18 going to make every single employee get one of these vaccines.

19 And they had a meeting where there was a lawyer
20 there, who you're going to hear from in this case, and there
21 was a whole bunch of people from the Human Resources
22 Department. They have a fancy name for their HR. It's like
23 Labor and Development or Labor and Employee -- Labor and
24 Employee Relations is what they call it. But it's just a
25 fancy word for HR.

1 They have a meeting, and right off the bat they are
2 talking about what is our process going to be. Because they
3 know when they tell their workforce that they have to get
4 vaccinated, there is going to be some problems with that.

5 So they tell -- so right off the bat the VP, the
6 head of their HR says, we're not going to accept all these
7 religious accommodation requests. Those are her words. We're
8 not -- they don't even know what the people are going to say.
9 They don't even know.

10 They say right off the bat, we're not going to accept
11 all these. You're going to hear, they rejected the majority
12 of religious accommodation requests. 75 percent. Okay? They
13 said, we're not going to accept these.

14 Then the lawyer says, I'm going to set up a
15 process -- and we're going to show you documents that prove
16 this -- who helped develop this whole process to basically --
17 it's an inquisition of, we're going to interview people and
18 make them defend their religion, is essentially what they do.

19 We're going to ask them a bunch of questions and make
20 them defend. And he set up all kinds of other part of the
21 process. His name is Bart Feinbaum is the lawyer's name. And
22 you're going to hear from him. I'm going to call him as a
23 witness in this case, Bart Feinbaum.

24 He compares it -- now, this gentleman has been a
25 lawyer for a very long time. And you're -- you're going to

1 hear that he compared it to cross examinations in court.

2 So it's something that you're about to see, where a
3 witness is going to have to get up on that stand and be cross
4 examined by me and then my witnesses are going to have to
5 be cross examined by these people over there for Blue Cross
6 Corporation.

7 And he compares -- he says, we're just going -- you
8 know, we're going to cross examine these people and it's going
9 to be fun. That's the word he used. This is going to be,
10 quote, "fun." It's going to be fun to interrogate our own
11 workers about their religious beliefs.

12 People start getting excited. One HR professional,
13 this was the team that was developing this says, can we be in
14 the background of these interviews -- if you can call them an
15 interview -- and not say anything, just so we can watch,
16 because this sounds like fun.

17 And the attorney says, no way. Quote, "Because you
18 will be a witness and then they can depose you."

19 And depose means, ask you questions under oath in a
20 court case. Okay?

21 So that's how this process got started.

22 Now, this individual then developed questionnaires.
23 And then they announced to the -- right following this
24 meeting, we're going to show you documents and we're going to
25 put people on the stand about this, that they then made people

1 submit what's called a request for religious exemption. Okay?

2 So Lisa submitted a request. She did what she was
3 told. And she didn't know what to do, because Blue Cross
4 didn't give any guidance to its employees.

5 They didn't say, look, here's the criteria. We need
6 to make sure that you're telling -- that you're honest and
7 sincere. Here's what we're going to look at. You know, they
8 didn't go talk to her priest. They didn't go talk to anybody
9 around her. They didn't go talk to her neighbors.

10 They didn't go talk to the godmother of her kids, who
11 was her boss, who was also working at Blue Cross Blue Shield.
12 They didn't walk down to the office and say, hey, do you think
13 -- I know you're the godmother. Do you think she is really
14 religious? Because she is claiming she is religious. We
15 need -- we need to look into this. We need to cross examine
16 her.

17 So Lisa goes online and starts looking up, what am
18 I going to do; right? She has never been through this. What
19 am I going to do?

20 And she finds some religious accommodation request
21 templates online that she looks at that explain, here's what
22 other people are doing.

23 And so she looks at those and then she prays on it.
24 You're going to hear that she prayed for a long time about it.
25 And then she still wasn't even done, because she still felt

1 worried about it. She had worked there for almost 38 years
2 and she was having a crisis of conscience. And she wanted to
3 continue to work there.

4 So she went to see her priest. And he is going to be
5 my first witness. His name is Father Ptak. It's her priest.
6 And he's going to tell you, she came to him. She was upset.
7 She was torn about what to do.

8 She said: Father, I don't know what to do. They are
9 making me choose between my religious beliefs and getting
10 something, this vaccine, that I don't believe in because of
11 the fetal cell issue.

12 And the priest told her: Lisa, you have to follow
13 your conscience. You have to follow what your conscience
14 tells you. That's God's way of talking to you. That's the
15 Holy Spirit. You need to follow what you believe in your
16 heart and your conscience.

17 And that's what she did. She made a religious
18 exemption request, which we're going to show you.

19 And she said: Due to the sincerely held personal
20 religious beliefs and sanctity of my conscience I am not able
21 to receive this vaccine. While I understand that I am not
22 legally required to justify the basis for my sincerely held
23 religious belief, nevertheless, I am providing several reasons
24 for why this policy violates my Christian faith and why
25 I cannot therefore in good conscience take part in it.

1 We will show you this whole thing throughout this
2 trial. There is a lot of other stuff. She quotes the Bible.
3 She quotes St. Paul. She quotes a lot of people.

4 And she says the COVID vaccine manufactured by
5 Moderna and Pfizer has used aborted fetal cells in the testing
6 process and the one manufactured by Astra Zeneca and Johnson &
7 Johnson used aborted fetal cells in every step of the process,
8 including development, production, and lab testing.

9 That was her reason. Again, you may disagree with
10 her decision to do that, but it was her decision.

11 So she makes this religious accommodation request.
12 And by the way, when she makes the request she has to fill out
13 this, like, six page -- six questions, not six pages. It's a
14 six-question questionnaire that Blue Cross made up. Okay?
15 That they made up this questionnaire.

16 And she tells them in the questionnaire, and I'm
17 going to show it to you, she says, here's my priest. If you
18 have further questions contact Father Ptak, address, phone
19 number, email, everything.

20 So here's what Blue Cross does. And this was -- this
21 was pursuant to their policy that they made. This is how they
22 handled all the requests.

23 Go back a second.

24 So they tell her, you have to go into an interview
25 now. I know you submitted all this written documentation, but

1 now you have to go into an interview. The interview was with
2 an HR professional and a lawyer. Okay?

3 So imagine this. Lisa is being told, you need to now
4 go before the inquisition panel, I'll call it that, but the
5 interview panel, and there's going to be a lawyer and an HR
6 person.

7 And so the employees asked, well, can I bring a
8 representative? No. Well, Blue Cross, can I bring a lawyer?
9 No, absolutely not. Well, did you give them guidance? No.
10 No guidance. They said, show up at the interview, and we're
11 going to ask you a bunch of questions.

12 The interview was 15 minutes long. That's how -- the
13 max time of the interviews could be, was 15 minutes, and then
14 they went on to the next person.

15 And they are going to say that was their process and
16 it was a fair process. How in the world -- you know, you have
17 Martin Luther, you have biblical scholars defend theology for
18 their entire lives, and they want an employee to defend their
19 religion in 15 minutes or less without doing any
20 investigation?

21 So she went to the interview. They told her at the
22 beginning of the interview, this is completely voluntary,
23 Lisa. Don't worry. You don't have to do this interview.
24 This is completely voluntary. She went anyways.

25 And she just had her -- a family member, she had a

1 family member die the day before the interview. She had
2 to bury a family member at a funeral and then go to this
3 interview with Blue Cross the next day, this interview.
4 It's absurd.

5 And Lisa goes to the interview. They say, this is
6 completely voluntary.

7 We're going to show you. There is a transcript.

8 Go to the next one, Craig. Please go to the next --
9 no, go to the transcript.

10 So Lisa has -- I don't know if anybody uses Word with
11 dictation.

12 No, keep going, Craig. There is a transcript,
13 please.

14 And they give the interviewers all these questions.
15 And this is an exhibit in this case, and we're going to talk
16 about that.

17 So here's the transcript. So Lisa says -- so
18 remember, there is a meeting. There is that October 12
19 meeting between the lawyers and HR, right, where they say
20 we're not going to accept all these religious accommodation
21 requests.

22 So Lisa -- so Lisa says, can I record the meeting?
23 And they say no. So what Lisa does is she has, you know, a
24 Word document, you can hit -- there is like a dictate button
25 and so she dictates it so it makes a little transcript of the

1 meeting.

2 And then she went back and she put in the names of
3 the people that are there. This is an exhibit. They are
4 going to show it to you in this case and we're going to show
5 it to you in this case.

6 So they first tell her, don't worry. They don't even
7 use the word, voluntary. They say it's completely voluntary.
8 Lisa Domski, who's been here for 38 years, who has worked late
9 nights, who has given up and sacrificed time with her family.
10 This is completely voluntary for you.

11 So Lisa says, okay. Well, sirs, Mr. Lawyer and
12 Mr. HR Person, I have already submitted your questionnaire
13 online, and I have already submitted a statement, and I have
14 given you my priest's information. What else do you possibly
15 need? What can I tell you in 15 minutes to defend my
16 religious beliefs?

17 So they say: Well, are you refusing to answer our
18 questions? Are you declining to answer all of our questions?

19 And Lisa says: I'm not declining to answer your
20 questions. I have submitted a statement.

21 And this is what they say: You're declining; right?
22 You're declining to answer the questions we have. Okay.

23 Lisa says: I have to say it again. I apologize.
24 But I have submitted a statement to you outlining my religious
25 beliefs.

1 Then she says: Can you submit the questions to me
2 in writing and I can get them back to you?

3 She says, no, we don't -- they say, no, we don't do
4 that. That's not how this process works. Everyone has
5 cooperated and, no, we don't provide that.

6 And by the way, they didn't even have her written
7 statement. They didn't even take a look prior to this
8 interview. This is how sloppy this process was, how bad it
9 was. They didn't even have her written statement or questions
10 at the interview to look at.

11 Go ahead.

12 So she is interviewed on December 1. They tell her
13 multiple times this is completely voluntary. And then the
14 next day, one day later, they just say, you're denied. Your
15 request for religious exemption is completely denied. You
16 don't have a right to appeal it. You don't have a right to --
17 you can't provide additional information.

18 They didn't say -- they didn't say, Lisa, we need
19 some more information. You know, Lisa, you know, we don't
20 want to go back to your priest. You need to go talk to your
21 priest. They didn't give her any opportunity to provide any
22 additional information whatsoever.

23 They just said, you're denied. Good-bye. Box up
24 your stuff and send it back to us. Thanks for 38 years.

25 They didn't even say thank you for 38 years. Here's

1 what they said. They denied her religious exemption and they
2 said you have until December 8th to get vaccinated. We don't
3 care about your religious beliefs. You either get vaccinated
4 or you're fired.

5 And Lisa was upset. And Lisa cried. And Lisa talked
6 to her family. And Lisa prayed. And Lisa said, I am not
7 going to do something that I believe is against my religion
8 and my conscience.

9 And she was fired from Blue Cross Blue Shield after
10 38 years of hard work and service because she refused to give
11 up her religious beliefs. That's what this case is about.
12 And it's illegal. It is illegal, what they did to Lisa
13 Donski. They cannot do that.

14 That's not what our founders intended. That's not
15 what the Civil Rights Act of 1964 allows for. And that's why
16 we're going to ask for a verdict at the end of this case that
17 tells Blue Cross Blue Shield you can't do this to Lisa Donski.
18 You can't do this to anybody. You can't do this to anybody.

19 And we're going to be asking for a large verdict,
20 millions of dollars, that sends a message to Blue Cross Blue
21 Shield, that says what you did, you violated her civil rights.
22 You took away 38 years that she had given to this company
23 without so much as a thank you, because she refused to give
24 up her religious beliefs. It was her choice, and she wasn't
25 hurting anyone. She worked from home. She worked from home.

1 They sent her a single letter in the mail. This was
2 what she got for 38 years, by the way. This is an exhibit.

3 They said: Our records indicate you're not in
4 compliance with this vaccine requirement nor have you been
5 approved for an accommodation. This letter serves as your
6 notice that your employment is terminated effective January 5
7 of 2022.

8 That's what she got for 38 years of giving to them.
9 She gave them 38 years of her life. She got a letter saying,
10 we don't care about your religious beliefs. You're fired.

11 They said, box up your stuff at your house. Box up
12 your computer. Box up everything else you have and send it
13 to us in the mail in a UPS box. Good luck. Good luck.

14 That's illegal. And that's why you're here. That's
15 why you're here. Because nobody can stop it except you.
16 Nobody can do justice in this case except you.

17 And that's why this case is so important. It's
18 important because it's about an individual's right to believe
19 in what they want to believe in and not have a corporation
20 tell them, if you don't do or say or walk or talk like we
21 want, you're fired.

22 So you're going to hear about this financial distress
23 that Lisa -- it did on Lisa. Lisa had worked her way up
24 and was making close to \$100,000 a year without a college
25 education, over 38 years of service.

1 She started applying at TJ Maxx. And people were
2 asking her, wait a minute, why would you give up a job at
3 Blue Cross Blue Shield making \$100,000 a year to work at
4 TJ Maxx? To work at TJ Maxx. But she tried.

5 She applied to Henry Ford. I don't know if you guys
6 know the Henry Ford Village, the Henry Ford Museum. She
7 got a job at Henry Ford working in a back room answering
8 telephones. She made about \$5,000 that year. She went from
9 making \$100,000 a year to making \$5,000 working at Henry Ford
10 in a back room answering a telephone.

11 She applied to General RV. She interviewed. She
12 was driving all over. You're going to hear that Lisa and her
13 family are from downriver and she was driving all over trying
14 to find a job.

15 And her friends were saying, why are you driving all
16 over? She said, nobody wants to hire me. Who is going to
17 hire somebody who at 55, she was terminated at 55, who gave
18 up a job because of her faith and she had to explain it to
19 people?

20 And you're going to hear she was embarrassed that she
21 had to defend her faith to random strangers, that she is going
22 to have to do in this courtroom with all of us, defend her
23 faith in front of all of us, but she is going to do it. And
24 so she applied for all these jobs.

25 So what are the defenses in this case? You're going

1 to see two defenses that -- I think, in this case. You're
2 going to hear the first defense which is just to blame --
3 I call it the blame-Lisa defense. All right?

4 Because here's what they don't have. They can't come
5 in here and say she was a bad employee that deserved to get
6 fired. So what they are going to say is, you know what, it's
7 her fault. She should have known somehow to provide more
8 or better information to us, even though she answered the
9 questionnaire that they gave her.

10 She -- even though she didn't have the benefit of
11 a lawyer, I -- she -- I didn't know Lisa at that time.
12 Mr. Hurwitz didn't know Lisa at that time. They told her she
13 couldn't have a lawyer. So even though they got a lawyer and
14 they got an HR person, that she should have just done better
15 in this interview. And that's a bunch of ridiculousness.

16 THE COURT: Mr. Marko, you have about five minutes.

17 MR. MARKO: Five minutes.

18 They told us -- I told you I was longwinded. I'm
19 doing my best.

20 They told her, this interview is completely
21 voluntary. They said it twice. They didn't say it's
22 voluntary. They said it's completely voluntary.

23 And she said, okay, wow, good, what a relief.
24 I don't have to defend my faith before strangers, lawyers,
25 and strange HR people, after 38 years, in an interview, in

1 an inquisition.

2 And they are going to get up here and they are going
3 to tell you it's her fault. She should have answered the
4 questions better in the interview. That's ridiculous.

5 If you look at the transcript, it says completely
6 voluntary, twice. Completely voluntary.

7 The day after she had to bury a family member, you're
8 going to make her come in and defend her faith. Nobody
9 that -- she did not deserve that. Nobody deserves that.

10 You're going to hear that her -- and this is it,
11 and I'll show it to you again -- the answers are completely
12 voluntary. And this is it. This is -- this is the thing
13 that she filled out.

14 She put right on there, please, you can contact
15 Father Ptak if you have questions, Our Lady of Sorrows,
16 Farmington Hills. He is a pastor. Here's his email and
17 here's his telephone number.

18 What other proof? How do you give proof about your
19 religion? How in the world can you prove what you believe
20 inside your soul and your heart? What else can you do? What
21 else should you have to do?

22 The last thing is -- oh, and they are going to say,
23 oh, well, Lisa's religious accommodation request looked
24 somewhat like a template for employees that was placed on a
25 Christian Catholic website. Of course it did. Of course

1 it did. She didn't know what to do. She went online and
2 she said -- she looked up, what should I do? I don't have a
3 lawyer. I don't have an HR person with me. I don't have a
4 labor representative. They didn't tell me what they want.
5 So she did the best that she could.

6 The second thing that I think you're going to hear is
7 that it's for everybody's own good. We're sorry about what
8 happened to Lisa, but you know what, it was for our own -- it
9 was for everybody's own good that she had to be forced to be
10 vaccinated or lose her job, because we were in a pandemic.

11 Lisa was working from home. There was alternatives
12 available. She -- when Lisa went out in public, she was safe.
13 She wore a mask. She didn't endanger anybody else. She never
14 endangered anybody else. But it was her choice. It was her
15 choice to live her life privately how she wanted to do. It
16 didn't hurt anybody else. She didn't put her beliefs on
17 anybody else and they can't put their beliefs on her. That's
18 the deal that we have under the law in America. They can't
19 put their beliefs on you any more than she can put her beliefs
20 on them.

21 And they didn't offer any accommodation. Remember.
22 When they get up here and tell you it was for their own good,
23 it was for your own good. That -- a corporation cannot have
24 policies that violate the Constitution or the Civil Rights Act
25 of 1964.

1 Ladies and gentlemen, thank you very much. I look
2 forward to presenting this case to you. I'm going to sit
3 down. The attorneys for the Blue Cross Corporation are going
4 to talk to you and then we're going to start presenting
5 evidence in this case.

6 Thank you so much.

7 THE COURT: Thank you, Mr. Marko.

8 All right. Mr. Hubbard, are you prepared to address
9 the jury?

10 MR. HUBBARD: I am, your Honor.

11 THE COURT: You may proceed.

12 MR. HUBBARD: Thank you, Judge.

13 Good morning.

14 JURORS COLLECTIVELY: Good morning.

15 MR. HUBBARD: As a reminder, my name is Brandon.
16 With us here today are Nolan Moody, Carrie Voss, Maureen
17 Moody, Rudy Makupson.

18 Rudy Makupson is in-house counsel for Blue Cross. He
19 is our client representative. I have had the privilege of
20 working with Rudy for quite some time.

21 You'll remember that Nolan and Maureen, they are
22 brother and sister.

23 And Carrie, she is our paralegal and she runs all
24 things evidence for us during the course of this trial. So
25 you'll see her put some stuff up on the screen for you,

1 including right now.

2 To start, I want to thank you. I understand that
3 this is taking time out of your daily lives and it disrupts
4 what you would otherwise be doing. So thank you. And it is
5 a privilege to be trying this case in front of you.

6 We all lived through it, the pandemic. COVID-19.
7 The shutdown. It was an unprecedented and trying time.
8 No question about that.

9 And that included for Blue Cross, a healthcare
10 company headquartered in Detroit in one of the nation's
11 hardest hit cities by the virus.

12 For Blue Cross, yeah, it wanted to fight back against
13 that deadly virus, not just for the safety of its employees,
14 but for its community. And part of that decision to fight
15 back was to implement a vaccine policy.

16 No, it wasn't an easy decision, but not many were
17 when it came to COVID-19. And for Blue Cross, being in the
18 healthcare industry, seeing the havoc that that deadly virus
19 was wreaking on employees and the community, it wanted to
20 fight back. It didn't want to be defeated by it.

21 As for the policy, not everybody had to be
22 vaccinated. There were two exemptions. The first was
23 medical. If you had a medical reason why you couldn't get
24 the vaccine, you could apply for and be approved for an
25 accommodation, an exemption. Didn't have to get it.

1 The second, religious. If you had a sincerely held
2 religious belief that conflicted with the vaccination policy
3 such that you couldn't get the vaccine, you too would be
4 granted an exemption.

5 Blue Cross, it received hundreds of vaccination --
6 excuse me -- religious requests. That's a lot.

7 Blue Cross, it took the process very seriously. It
8 wanted to hear from the employees in their own words what it
9 was about their religious beliefs that prevented them from
10 getting the vaccine. Blue Cross wanted to be informed. And
11 that makes sense, because religion, you can't see it.

12 You may well be able to ascertain, and I think you
13 can, my gender. You could probably guess my age and even my
14 weight. But what about my religious beliefs?

15 This case, it's about what you can't see in
16 Ms. Domski's religion. She alleges that Blue Cross
17 discriminated against her on the basis of her sincerely held
18 religious beliefs.

19 Now, I would like to share with you a couple of words
20 that I think will be important in this case.

21 The first, inform.

22 Ms. Domski, she has to establish in this case that
23 she has a sincerely held religious belief that conflicts with
24 the vaccination policy. But she has to establish that she
25 informed Blue Cross about that. Informed.

1 The second word, cooperation.

2 Ms. Domski was asked during the interview that she
3 had, the meeting that she had with Jeff Walters -- you're
4 going to hear from Jeffrey Walters.

5 And Jeff said: We're looking for your cooperation.

6 Her answer: Absolutely.

7 Now, the Judge told you that opening statements, it's
8 not evidence. And so what I say and what Mr. Marko says isn't
9 evidence in this case. What is evidence is what the witnesses
10 testify to and the exhibits that you actually see and read.
11 That's the evidence.

12 So what is the evidence going to show? Ms. Domski,
13 she submitted a request for religious accommodation. It was
14 a short letter, just over a page. And not long after having
15 submitted that, she met with employee Jeff Walters.

16 And you will hear from Jeff. He was the decision
17 maker relative to Ms. Domski's request. He will share
18 with you that when he asked Ms. Domski about the religious
19 beliefs that she followed and why she was asking for the
20 accommodation, she was unwilling to answer.

21 But Jeff, he wanted to understand Ms. Domski's
22 beliefs in her own words. And you will hear from Ms. Domski.
23 Ms. Domski will testify that her letter that she submitted
24 was based upon her being Catholic and a member of the Catholic
25 Church. You actually heard some of that in Mr. Marko's

1 opening statement.

2 But here's the problem. Ms. Domski, when she
3 submitted that letter, it didn't make any reference to her
4 being Catholic or part of the Catholic Church. And when Jeff
5 Walters asked her questions during the interview, she didn't
6 share those beliefs with him either. She never informed
7 Blue Cross of that.

8 I'm going to show you Exhibit 206. This is the
9 letter that Ms. Domski submitted. I told you it was just
10 over a page. That's the first page. That's the second.

11 And you can see that it bears her signature. But it
12 doesn't make reference to her being Catholic, her beliefs.
13 It doesn't make reference to her religion.

14 So Blue Cross, wanting to learn more, wanting to be
15 informed, I think you will agree, is understandable. You
16 saw the -- I think Mr. Marko referred to it as a transcript of
17 sorts relative to the meeting that Ms. Domski had with Jeff
18 Walters, and it's Exhibit 16.

19 And I would like to actually go through with you the
20 questions and the answers, including what Jeff asked and how
21 she answered them.

22 Question one, Jeff says: Why are you requesting an
23 accommodation to the vaccine?

24 Answer, her exact words: I understand the company
25 has issued a vaccine mandate. I have asked for a religious

1 accommodation. I have submitted a statement in support of the
2 accommodation and the statement speaks for itself. I have
3 nothing to add.

4 That's it.

5 Second question.

6 Same question asked by Mr. Walters. He tries again.

7 And her exact response: Again, I put it all in my
8 statement which supports everything and what I have to say.
9 Supports everything and what I have to say. I have attached
10 it and sent it to the appropriate people and the statement
11 speaks for itself. Nothing more.

12 Jeff, he asks her a third question: What religious
13 beliefs do you follow?

14 Her exact response: I understand the company has
15 issued a vaccine mandate. I have asked for a religious
16 accommodation. I have submitted a statement in support of the
17 accommodation and the statement speaks for itself. I have
18 nothing to add.

19 Jeff Walters, he asked those questions and
20 Ms. Donski, that's how she answered them.

21 Among many other things, Jeff, he is going to testify
22 that, yes, he reviewed the letter that Ms. Donski submitted
23 before he met with her.

24 He remembers the meeting with Ms. Donski mostly
25 because she was unwilling to answer any of the questions that

1 he had about her religious beliefs.

2 He did not know that Ms. Domski was Catholic. And
3 because Ms. Domski was unwilling to answer the questions that
4 were being asked, Jeff, he was left with the honest belief
5 that the letter and the contents were not her own.

6 Because if they were her own, and she genuinely did
7 not want to take the vaccine because of her Catholic faith and
8 Catholicism, Jeff believed that she would be willing to talk
9 about it with him. But she did not. And so based on his
10 honest belief, he denied her request.

11 And now she has sued Blue Cross and she is going to
12 ask for a lot of money. But remember, the burden is on
13 Ms. Domski to prove not only that she has a sincerely held
14 religious belief that conflicts with the vaccine policy, but
15 that she informed Blue Cross of that conflict.

16 The evidence in this case is going to point in
17 one direction. Blue Cross, it wanted to be informed about
18 Ms. Domski and why she was requesting the accommodation. But
19 she was unwilling to answer the questions that were asked
20 about her religious beliefs. Is that cooperation?

21 At the end of this case I'm going to ask you to
22 return a verdict that Ms. Domski is not entitled to any
23 damages, because Blue Cross did not discriminate against
24 her on the basis of her sincerely held religious beliefs.

25 Ms. Domski may well tell you that she is a devout

1 Catholic, and she may well tell you that her Catholicism
2 prevented her from getting the vaccine, but she never
3 informed Blue Cross of that.

4 Thank you.

5 THE COURT: All right. Mr. Hubbard, thank you very
6 much.

7 Members of the jury, those are the opening
8 statements.

9 We're going to take a break. Would you put those
10 monitors down? I think it's easier to get in and out of the
11 jury box if they are not up.

12 Please do not discuss the case among yourselves.
13 Please do not leave the jury room. The break will be about
14 15 minutes or so. And then we will come back and begin
15 taking the evidence in the case.

16 Mr. Beyer, would you escort the jury out, please?

17 THE CLERK: All rise for the jury.

18 (Jury left courtroom at 11:24 a.m.)

19 THE COURT: Either side have anything for the record
20 before we take a break?

21 MR. MARKO: No, your Honor.

22 THE COURT: 15 minutes. Court is in recess.

23 MR. MARKO: Thank you, your Honor.

24 (Recess taken from 11:25 a.m. to 11:45 a.m.)

25 THE CLERK: All rise. Court is back in session.

1 You may be seated.

2 Is the plaintiff ready for the jury?

3 MR. MARKO: Yes, your Honor.

4 THE COURT: Defendant?

5 MR. MOODY: Yes, your Honor.

6 THE COURT: Bring the jury in, please.

7 THE CLERK: All rise for the jury.

8 (Jury entered courtroom at 11:46 a.m.)

9 THE COURT: You may be seated. You heard the
10 statements of the attorneys and now we will begin with the
11 presentation of evidence.

12 Mr. Marko, you may call your first witness.

13 MR. MARKO: Thank you, your Honor. We will call
14 Father Ptak to the stand.

15 THE COURT: Are you Walter Ptak?

16 THE WITNESS: I am.

17 THE COURT: Would you step forward, please?

18 Just pause right there for a moment. Raise your
19 right hand and be sworn.

20 (Oath administered at 11:47 a.m.)

21 THE COURT: Would you have a seat right over here in
22 the witness box, please?

23 THE WITNESS: Thank you.

24 THE COURT: Please adjust that -- you might want to
25 pull it a little closer to you, so that you can speak into the

1 tip of it.

2 Would you state your full name and spell your last
3 name?

4 THE WITNESS: My full name is Walter Joseph Ptak,
5 P-t-a-k.

6 THE COURT: You pronoun is Ptak?

7 THE WITNESS: Ptak.

8 THE COURT: Thank you. Good morning.

9 THE WITNESS: Good morning.

10 THE COURT: You may proceed.

11 MR. MARKO: Thank you.

12 * * *

13 WALTER JOSEPH PTAK

14 was called as a witness, after having
15 been duly sworn to testify to the truth.

16 * * *

17

18 DIRECT EXAMINATION

19 BY MR. MARKO:

20 Q. Good morning, sir. Father.

21 A. Good morning.

22 Q. Tell the jury, who are you?

23 A. My name is Father Walter Ptak. I'm a priest of the
24 Archdiocese of Detroit. I am pastor at Our Lady of Sorrows in
25 Farmington, Michigan.

1 Q. And you have your official garments on today?

2 A. I do. I have been given the honor of being called a
3 canon. It's an honorary title in the church given to me by
4 Cardinal Dziwisz, who was Pope John Paul's right-hand man,
5 with the concurrence of the Archbishop of Detroit.

6 Q. So let me ask you something. When most people see you
7 out in the street in that, in your garb, do they have an
8 understanding that you're Catholic?

9 A. I would say yes.

10 Q. And the reason I ask, Father, when people talk to you, do
11 they use the word, Father?

12 A. Almost always.

13 Q. And does the word Father or Most Reverend denote a
14 Catholic priest or Catholic position?

15 A. In my understanding, it does.

16 Q. And the reason I ask is, let me show you what's been
17 marked as Defendant's Exhibit 206, which is Lisa Donski's
18 religious accommodation request to Blue Cross Blue Shield.

19 And I want to focus specifically on the last page.

20 MR. MARKO: Is this working?

21 THE COURT: No. It's also not been admitted.

22 MR. MARKO: This is Defendant's Exhibit 206.

23 THE COURT: Right. It's not been offered or
24 admitted.

25 MR. MARKO: It's been stipulated to. I move for

1 admission. It's been stipulated to previously.

2 THE COURT: Is there any objections to Exhibit 206?

3 MR. MOODY: None, your Honor.

4 THE COURT: All right.

5 (Defense Exhibit 206 received.)

6 MR. MARKO: All right. Now that's admitted, and I
7 apologize for that. This is Defendant's Exhibit 206, which
8 has been represented to be Lisa Domski's accommodation
9 request.

10 And is it working now? Okay. Okay.

11 BY MR. MARKO:

12 Q. So because based on your title, your uniform, and you are
13 a -- you're stationed where, sir, did you say?

14 A. Our Lady of Sorrows in Farmington, Michigan.

15 Q. All right. So let's look at what Lisa Domski put on the
16 last page of her religious accommodation request.

17 It says Religious Accommodation Request at the top.
18 Do you see that?

19 Can you see that on your screen?

20 A. Yes, I do.

21 Q. And then is that you? Very Reverend Canon Walter Ptak?

22 A. It is.

23 Q. From Our Lady of Sorrows?

24 A. It is.

25 Q. And is that a Catholic Church?

1 A. It is.

2 Q. And so if someone at Blue Cross just went on the internet
3 and Googled Our Lady of Sorrows would their website pop up that
4 it's a Catholic Church?

5 A. It does.

6 Q. And it has even your address of the church?

7 A. Uh-huh. Technically, that's the address of the school,
8 but we're on about eight or ten acres of land. So.

9 Q. Is that a Catholic school?

10 A. It is a Catholic school.

11 Q. And it has your email, wptak@ourladyofsorrows.com?

12 A. That is.

13 Q. And is that your phone number?

14 A. I believe so. I'm not there quite four years, so there's
15 so many phone numbers, but it does look familiar.

16 Q. All right. So, I mean, just reading that, based on your
17 experience, would that just lead a normal person listing a
18 Catholic Church, listing a priest, to know that it's related to
19 Catholicism?

20 MR. MOODY: Your Honor, I'm going to object. It
21 calls for speculation.

22 THE COURT: It does. The objection is sustained.

23 BY MR. MARKO:

24 Q. Let me ask it this way. It's undisputed that this is --
25 206 was provided to Defendant Blue Cross.

1 Did Blue Cross and Blue Shield ever call you on the
2 phone to ask you about Lisa Domski's religious accommodation
3 request?

4 A. No.

5 Q. Did Blue Cross Blue Shield ever send you an email that
6 said they wanted more information, Very Reverend Canon Father,
7 about her religious accommodation request?

8 A. No.

9 Q. Did they ever write you a letter in the mail that said we
10 are investigating this and we need some more information about
11 Lisa Domski?

12 A. No.

13 Q. Has Blue Cross Blue Shield, during all the relevant time
14 periods of this case, ever made any attempt whatsoever, to your
15 knowledge, to contact you to ask for information about the
16 sincerity of Lisa Domski's religious beliefs?

17 A. To my knowledge, no.

18 Q. Had Blue Cross Blue Shield, had the defendant in this case
19 called you, written you a letter, whatever, contacted you in
20 any way, shape, or form and asked you to provide background or
21 supporting evidence for Lisa Domski, would you have done it?

22 A. I probably would have, but I would have checked with
23 Bodman, because that's the Archdiocese attorney, and we're told
24 whenever there is anything legal to consult with them. And
25 I probably also would have checked with Lisa just to make sure,

1 because a relationship with priest and parishioner is, you
2 know, something I would want to make sure. But I -- I would
3 have been -- I would have answered at least.

4 Q. Sure. And if Lisa said -- as you can see, she put down
5 your information to Blue Cross Blue Shield.

6 If Lisa told you, Father, go ahead, would you have
7 provided a letter or other information to Blue Cross Blue
8 Shield?

9 A. Absolutely.

10 Q. And just to be clear, no one from -- anyone, not any
11 member of any Blue Cross, ever contacted you in any way, shape,
12 or form, to your knowledge, sir?

13 A. Not to my knowledge.

14 Q. Okay. Now let me ask you another question.

15 Catholicism. Okay. And I want to show you Lisa's --
16 this is exhibit -- Defendant's Exhibit 206, which has been
17 represented as a religious accommodation request that says --
18 no, it's part of the same exhibit. So this is part of the same
19 exhibit.

20 So it says: I am not able to receive the vaccine due
21 to my sincerely held religious beliefs and the sanctity of my
22 conscience. It violates my Christian faith.

23 Sir, are all Catholics Christians?

24 A. I would say so.

25 Q. What's -- so are all Christians Catholics?

1 A. No.

2 Q. Okay. So when someone uses the word, Christian, does that
3 include necessarily, based in your experience and training, the
4 Catholic faith?

5 A. I would say yes.

6 Q. All right. Let's talk a little bit about Lisa.

7 Tell us, Father, how did you get to know Lisa Donski?

8 A. So it goes back to the late '80s. I was newly ordained.
9 Sent to St. Alfred's Parish in Taylor, Michigan, and began
10 there on July 1 of 1988.

11 I believe at the festival in September of '88, we
12 have a parish festival every year, Larry, which now is her
13 husband but at the time was not, was an auxiliary cop for the
14 City of Taylor, and I believe that's where we first met, and
15 shortly after I met Lisa, and have known them every since. So
16 that's 35, 36 years ago.

17 Q. And tell us just about your experiences with the Donski
18 family.

19 A. Well, we became quick friends, because we had lots of
20 similar interests. Larry was outgoing and Lisa was outgoing
21 and we hit it off. I prepared them for marriage and married
22 them.

23 I know the day, because it was All Souls Day, and
24 I kind of told them, I can't imagine being married on All Souls
25 Day, for in the Catholic Church it's such a -- you know, it's

1 kind of the day of the dead; right? And -- but they were in
2 love and they wanted that date, so I believe that was 1990.
3 It goes back a few years. But I know it was All Souls Day.

4 And so during that preparation we became closer
5 friends in the sense that we had many of the same likes and
6 dislikes and --

7 Q. What were the likes?

8 A. Well, that they were both people of faith. They were both
9 fun-loving. They both enjoyed to socialize and to get together
10 and they were young, I was young, at the time. And we just
11 kind of became friends. It just happened.

12 There's people you meet in your life that just become
13 friends with -- without any real reason other than that you hit
14 it off well. And so they became close friends of mine over the
15 last 35, 36 years.

16 Q. And did you say you got to know them as both a parish
17 priest and did you see them outside of the parish?

18 A. Sure. I was only there for three years, and then I was
19 sent to another assignment. And then after that assignment of
20 one year, I was sent to Wyandotte, to where I grew up. And
21 they were living in Wyandotte at the time, and they joined the
22 parish that I was the pastor at and we became closer friends.

23 And, yeah, we socialized. I have been to their house
24 a few times and they have been to the rectory where I live a
25 few times. And, you know, many of the parish events, the

1 festivals and dances and school activities over the years.

2 So yes. We both were -- I was not only their priest
3 and their pastor, but also a friend as well.

4 Q. Now, when you first met Lisa was it before she was married
5 to Larry? Because you said you helped prepare them for
6 marriage.

7 A. Yes, I believe so. It's going back a few years. But it
8 would have to be, because they were married in '90. I arrived
9 there in '88. So, sure, that was before they were married.

10 Q. Was Lisa Catholic at that time?

11 A. I don't believe so.

12 Q. So at some time after you met her she had converted to
13 Catholicism?

14 A. She did. I think it's at least 25, 24, 23 years ago,
15 somewhere at the end of the 20th Century there.

16 Q. Just tell the jury briefly -- I know, look, we all know
17 the Catholic Church has a lot of rules, but tell the jury
18 briefly about, what does it take to convert to Catholicism?

19 A. Well, there is a process called the Right of Christian
20 Initiation for Adults. So it usually begins in the fall and
21 then ends at Easter when they are brought into the church,
22 and whether they need to be baptized, if they had not been
23 baptized, they're to make a profession of faith.

24 So there's a series of weekly classes that are held
25 between the fall and Easter and they learn about the ways of

1 faith and then are prepared to enter into the Catholic Church.

2 Q. Were you able to observe, through your time knowing the
3 Donski family, them participate in religious activities such as
4 Catholic activities or Christian activities?

5 A. Sure. They were involved -- even before Lisa became
6 Catholic, they were involved, because they were husband and
7 wife and were helping raise Lisa's nephew. And later on when
8 they were blessed with a daughter, of course, bringing her into
9 the faith and into the parish. So yes.

10 Q. Tell us a little bit about this raising of Lisa's nephew.

11 A. I have to think, because it's a long time ago, but I
12 believe it's Lisa's sister's son. And shortly after he was
13 born, Lisa and Larry were awarded foster care of Mark. And
14 they helped raise him and then helped the father of her nephew
15 gain custody. And I know he was a frequent visitor to their
16 home, and I know they helped the father of Mark gain the
17 custody and help raise the child.

18 Q. Is one of the tenets of the faith charitableness to the
19 less fortunate?

20 A. Absolutely. Absolutely.

21 Q. Did Lisa aspire or attempt to fulfill that Catholic
22 obligation of charitableness?

23 A. According to what I observed, yes.

24 Q. Did you see her participate in the Catholic upbringing of
25 her children?

1 A. Uh-huh. Of course.

2 Q. Tell the jury.

3 A. Well, she would have been, you know, bringing her for --
4 to church on Sundays, obviously. They were regular attendees
5 at mass. And then, I believe, enrolling her in the school.
6 I don't know -- you know, there's a lot of kids in the school
7 and that's a lot of years ago, but I am sure they -- Lisa was
8 involved in the school or went to the school there, and they
9 were involved in the life of the school, the life of the
10 parish, all the activities.

11 I mean, they modeled faith. In fact, I think when
12 Lisa wanted to become Catholic I had to remind myself that
13 she wasn't, because she just was, you know, a person of faith.
14 I mean, that was very evident. And, you know, those are the
15 things that I can recall.

16 Q. When you said -- you used the word, they modeled faith,
17 what does that mean?

18 A. Modeling faith would be that they, in their own lives,
19 practiced the teachings of the church and followed the
20 teachings of Christ especially, to be kind and loving and
21 concerned and generous. They were all of those things, in my
22 experience of them, in both St. Alfred's Parish and then later
23 on at Our Lady of Mt. Carmel in Wyandotte.

24 Q. Father, based on all your experiences with the Donski
25 family and with Lisa Donski, in all your training and

1 experience, in your perception, was she genuine in her
2 religious beliefs? Was she sincere?

3 A. I never knew her not to be. She was always genuine in
4 what she said and she followed through. I mean, they -- again,
5 active and involved. And I can't say that about every
6 parishioner or every person that attended church or had
7 children in the school. That's just not the way it happens.

8 But they were people that I knew I could go to if I
9 needed a hand or needed anything, that they were people I could
10 count on because they followed through in their actions.

11 Q. By the way, is there some type of test that can be given
12 to parishioners to determine if they are really religious
13 or not?

14 A. Not that I am aware of. That would be hard to do.
15 Because, you know, in the end it's what is in our heart, only
16 God sees. You know, we could do a good job pretending or we
17 could do a good job actually being people of faith and people
18 who love the Lord and serve the Lord. So to my knowledge,
19 there is no such test, no.

20 Q. Now, you have been given the title -- and I'm sorry,
21 Very --

22 A. Very Reverend Canon.

23 Q. Very Reverend Canon.

24 A. I know it's a lot.

25 Q. And you have been doing this for how many years,

1 practicing as a member of the clergy?

2 A. I was ordained in November of 1987, so later this month
3 will be 37 years.

4 Q. All right. Given your 37 years of experience being
5 trained as and being -- working as a Catholic priest, would
6 you be able to determine the sincerity of someone's religious
7 beliefs in 15 minutes?

8 A. No.

9 Q. Why not?

10 A. I wouldn't have enough information, because a lot of times
11 faith can't be observed. What is in our heart, we really
12 don't -- we can't project that. I mean, you can't see faith.
13 There is no way to measure it other than to get to know them
14 and to see them in action and to listen to them.

15 I mean, I know I try not to judge anybody what their
16 faith is, because you take it on face value that if they say
17 they're believers, they are. But when you get to know someone
18 over the course of years, you can see that evident.

19 Now, again, is that 100 percent? I don't know. But
20 based on everything that I have observed, I would say, yes, she
21 is definitely a person of faith who loves the Lord and does her
22 best to serve him.

23 Q. Let's talk now a little bit about this vaccine mandate.
24 Okay?

25 A. Okay.

1 Q. Did there come a time -- did you know Lisa worked for
2 Blue Cross Blue Shield?

3 A. I did.

4 Q. And how did you know that?

5 A. Through our conversations. I believe she was there for a
6 long, long time, if my memory serves me right. But again, it's
7 hard to remember. There's lots of people in 37 years that you
8 meet. Even though they are friends of mine, but to recall
9 every detail, but I recall she has been there probably -- was
10 probably there at least 30 years.

11 Q. Were you able ever to form an impression before she was
12 terminated of the value that Lisa put on her job or the
13 enjoyment that she derived out of her career?

14 A. Oh, I know it came up in conversation. She loved her job.
15 She loved what she did, working with people and helping people.
16 I mean, that's, I think, just who she is. You know, she
17 was happy working there. I mean, that came through in
18 conversations over the years.

19 I mean, specific details, I can't remember, but
20 I know it does come up when you're sitting around having dinner
21 or barbecue or whatever it may be.

22 Q. Now, did there come a time when Lisa contacted you --
23 first of all, just for -- as a general proposition, do
24 parishioners sometimes contact you to help discuss issues that
25 they are having in their personal lives or in their faith or

1 to seek guidance?

2 A. Sure, they do. Often. I mean, I don't know how many
3 times a week, but often.

4 Q. Did Lisa Domski contact you to seek your guidance when she
5 was told that she had to get vaccinated by Blue Cross Blue
6 Shield of Michigan?

7 A. She did.

8 Q. Tell the jury.

9 A. She contacted me --

10 THE COURT: Tell the jury what? Excuse me. Ask a
11 question.

12 BY MR. MARKO:

13 Q. What was your understanding of what was happening?

14 A. Well, when Lisa contacted me she was concerned that this
15 would violate her conscience, that she did not believe in the
16 vaccine and that that would be against what she held in her
17 heart. And she said, what can I do? So we talked about it.

18 Q. Was it your understanding that she had been praying about
19 what decision to make?

20 A. Yes. It was obvious from our conversation she was very
21 concerned, very upset, not knowing what to do. I mean, knowing
22 what she wanted to do, but not really knowing what to do.
23 I mean, she was wrestling with this decision.

24 Q. So you said she was concerned. She was upset. She was
25 wrestling with the decision.

1 What do you mean, wrestling with the decision?

2 A. Well, it was obvious, again, that she had been praying
3 about it, thinking about it, not knowing what to do. And
4 in other words, she was struggling, like, should I do this?
5 Should I follow what they are asking or should I object
6 because of my beliefs? And so that's what I would say was
7 her wrestling with her conscience over this matter.

8 Q. Did you provide guidance as her priest or as a priest?

9 A. I did.

10 Q. Can you tell the jury what guidance you provided?

11 A. I told her, as I would tell anyone in any circumstances
12 when it comes to a matter of conscience, that your conscience
13 has to be your ultimate guide, you know, but it has to be a
14 well-informed conscience; that you have to look at what the
15 church teaches, what you hold, and come up with a decision.
16 And so I told her, let your conscience be your guide. And
17 if you feel that strongly, I think you have your answer.

18 Q. All right. So let me break that down again.

19 You said let your conscience be your guide. And is
20 that right? You said let your conscience be your guide?

21 A. Right. But I told her, I cautioned her, like I would
22 anyone, because, you know, conscience, a well-informed
23 conscience is our best way to come to a conclusion, because
24 if your conscience isn't informed, in other words, if you don't
25 know what the issue is or why you feel that way, then how can

1 you say that your conscience is guiding you? And the Church
2 teaches that our conscience, a well-informed conscience is our
3 best guide.

4 So she said, well, Father, I have been wrestling with
5 this. I have been praying about it. I have been talking about
6 it. And so I said, well, I think you have your answer.

7 Q. Did you have any question that this crisis of conscience,
8 so to speak, was sincere?

9 A. No. There was no question that it was very sincere.

10 Q. And you said you think -- I don't want to put words in
11 your mouth, but something to the effect of it, seems like you
12 have your answer.

13 A. Yes. I told her, I -- yeah, I believe you have your
14 answer. Because she was -- you know, she -- in our
15 conversation she was, well, this is what I want to do, because
16 this is what I believe in.

17 And so I said, well, if your conscience is informed
18 and you have prayed and you have talked and you have consulted,
19 then I think you have your answer.

20 So without -- I mean, I didn't tell her what to do.
21 That's not my role. I never tell people what to do, because
22 they have to decide on their own whether this is what they
23 truly believe in.

24 Q. But you're a man of the faith, of the cloth. And you said
25 you're not going to tell your own parishioner what to do as it

1 relates to the vaccine. Why not? Why is it that you didn't
2 feel like it was your place to tell another human being what to
3 do with their conscience?

4 A. Well, I believe my role as a priest is to guide people
5 closer to the Lord and not to tell them what to do but let them
6 come to their own decision, to work with them and guide them
7 along that path, to help them, you know, inform themselves, but
8 they have to make their own decision, because you can't force
9 someone into belief. It just does not work.

10 Q. Were you -- was it your understanding at the time that you
11 were providing this religious and spiritual counseling to her
12 that her employer was attempting to force her to get the
13 vaccine?

14 A. In the conversation --

15 MR. MOODY: Objection, your Honor. Calls for
16 speculation.

17 MR. MARKO: Judge, he talked to her about it. He
18 counseled her. He knows the facts. He has a proper
19 foundation.

20 THE COURT: I'm not sure anything about speculation.
21 That objection is overruled.

22 MR. MOODY: Your Honor, I'll further object to the
23 form of the question as well. He was using the word "forced"
24 to get the vaccine.

25 THE COURT: That's the question. The witness either

1 knows or he doesn't. The objection is overruled.

2 MR. MARKO: Thank you, Judge.

3 BY MR. MARKO:

4 Q. Now I forgot the question, Father, in front of all these
5 people here.

6 Was it --

7 THE COURT: Were you aware that Ms. Domski was in
8 an employment situation in which her employer had a policy
9 requiring her to be vaccinated?

10 THE WITNESS: I was, because at the beginning of
11 the conversation, she made me aware of that.

12 THE COURT: The answer is that you were aware of
13 that?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Move on.

16 MR. MARKO: Thank you, Judge.

17 BY MR. MARKO:

18 Q. So is there anything inconsistent with Lisa's beliefs
19 regarding -- was it your understanding she believed it would be
20 a sin to get the vaccine given the development and production?

21 A. That was my understanding from talking with Lisa, that it
22 would be sinful because of what she held as truth.

23 Q. Is there anything inconsistent with her personal beliefs
24 about that and everything that you have told us about and the
25 teachings of the Catholic Church?

1 In other words, does the Catholic Church say you have
2 to get vaccinated?

3 A. No, there is nothing inconsistent about that in the
4 teachings of the Church.

5 Q. And Father, had Blue Cross contacted you, and again,
6 assuming your attorney from Bodman said it was okay and
7 assuming Lisa told you that it was okay, would you have told
8 them the same things that you just told us in this federal
9 courthouse in front of this jury?

10 A. I would.

11 MR. MARKO: Father, thank you so much. I don't have
12 any other questions for you right now.

13 THE COURT: Thank you.

14 Counsel, move the easel.

15 MR. MARKO: Yes, your Honor.

16 THE COURT: Cross examine?

17 MR. MOODY: Yes.

18 THE COURT: You may proceed.

19 CROSS EXAMINATION

20 BY MR. MOODY:

21 Q. Good afternoon, Father.

22 A. Good afternoon.

23 Q. My name is Nolan Moody. I'm an attorney for Blue Cross
24 Blue Shield of Michigan.

25 You mentioned this earlier, so I apologize, it's just

1 a little bit redundant, but you're a pastor at Our Lady of
2 Sorrows Catholic parish; correct?

3 A. I am.

4 Q. And that parish is a member of the Archdiocese of Detroit;
5 yes?

6 A. It is.

7 Q. And you have been a pastor there since July 1st of 2021;
8 is that right?

9 A. That is correct.

10 Q. Okay. And so if Blue Cross's policy regarding COVID
11 vaccination came out in approximately October of 2021, you
12 would have been pastor at that time?

13 A. I was.

14 Q. And you were speaking or advising -- speaking with or
15 advising Ms. Donski long before that time; is that right?

16 A. Advising as to?

17 Q. As -- well, as a pastor, as a father.

18 A. Sure.

19 Q. Providing religious advice to Ms. Donski?

20 A. Over the last 35 years, sure.

21 Q. Okay.

22 A. I mean, when it came up. I mean, not, like, every day
23 or -- I mean, whenever they had a question they would call upon
24 me and ask. I mean, whether -- whatever matter of faith it
25 would be, sure.

1 Q. Okay. The Archdiocese of Detroit will, from time to time,
2 provide guidance to the priests on how to address matters with
3 parishioners; yes?

4 A. They do.

5 Q. And you follow that guidance provided by the Archdiocese;
6 yes?

7 A. Yes.

8 Q. You're aware that when the COVID vaccine hit, the
9 Archdiocese provided guidance to its priests on how to discuss
10 vaccine policy mandates with its parishioners?

11 A. Yes.

12 Q. And part of -- you're aware that part of what the
13 Archdiocese told its priests to tell its parishioners is to
14 affirm the moral permissibility of COVID-19 vaccines; right?

15 A. That's -- they did say that, yes.

16 Q. The Archdiocese also told priests that when ethically
17 irreproachable COVID-19 vaccines are not available, it is
18 morally acceptable to receive COVID-19 vaccines that have
19 used cell lines from aborted fetuses in their research and
20 production process; correct?

21 A. That was their guidelines, yes.

22 Q. The Archdiocese also told priests to discuss with
23 parishioners that being vaccinated safely against COVID-19
24 should be considered an act of love of our neighbor and part
25 of our moral responsibility for the common good; yes?

1 A. They did.

2 Q. Now, the Archdiocese also said that within the Catholic
3 faith it's not a moral obligation and the choice is voluntary;
4 agree?

5 A. Absolutely.

6 Q. Okay. The Archdiocese stated that in this way it -- the
7 priest is to affirm to the parishioner that the individual
8 right of conscience which also affirms our shared
9 responsibilities to protect our own health and the health of
10 others in which -- the community we live, they said that as
11 well; yes?

12 A. They did.

13 Q. Okay. So as it pertains to Catholics in general, not all
14 Catholics are prohibited from taking the COVID vaccine?

15 A. I would say, yes, they are not prohibited.

16 Q. So merely identifying oneself as Catholic would not,
17 standing alone, be sufficient for you to say, yes, you're
18 prohibited from taking the vaccine; correct?

19 A. As a general rule, correct.

20 Q. Okay. You mentioned earlier you spoke to Ms. Domski about
21 her religious objection to the vaccine; correct?

22 A. I did.

23 Q. You advised her from a religious perspective on what she
24 should do; right?

25 A. I did.

1 Q. Okay. And I don't want to put words in your mouth, but
2 the words I wrote down is you told her to follow her heart,
3 let her conscience be her guide; is that right?

4 A. I did.

5 Q. Okay. You didn't tell her that she was prohibited from
6 taking the vaccine because she is Catholic; right?

7 A. No, I did not tell her that.

8 Q. And you would agree that the Catholic faith generally
9 allows its parishioners, depending on their own personal moral
10 compass, to take the COVID vaccine; correct?

11 A. Correct.

12 Q. And that's true even with COVID vaccines developed using
13 fetal stem cells; yes?

14 A. According to the Archdiocese, yes.

15 Q. And you follow the Archdiocese; yes?

16 A. To the best of my ability, yes.

17 Q. Okay. I imagine you have spoken with many of your
18 parishioners over the years about the COVID vaccine and whether
19 they should take it or not take it; is that fair?

20 A. That is fair.

21 Q. And I'm sure that at certain points you have had
22 parishioners that you have encouraged to get the vaccine
23 because they felt it was the right thing to do; yes?

24 A. Absolutely.

25 Q. Okay. So back to Ms. Domski for a moment. You met with

1 her to discuss how she felt about the vaccine; right?

2 A. Yes.

3 Q. You asked her questions about how she felt and she told
4 you; right?

5 A. Yes.

6 Q. So she articulated the reasons why her Catholicism don't
7 allow her to take the vaccine; yes?

8 A. Yes.

9 Q. I asked you earlier, when you hear someone is Catholic you
10 don't necessarily know if they can or can't take the vaccine
11 just standing alone; right?

12 A. Right.

13 Q. If you hear someone is Christian you don't necessarily
14 know that their religion prohibits or allows taking the
15 vaccine; right?

16 A. Correct.

17 Q. And saying that you're Christian doesn't mean you're
18 necessarily Catholic; right?

19 A. Sure. Absolutely.

20 Q. If I said I'm Christian, I haven't informed you that
21 I'm Catholic, just with that sentence; correct?

22 A. Say that again. I'm sorry.

23 Q. If I said to you, Father, I'm Christian, that alone would
24 not inform you that I am also Catholic?

25 A. Correct.

1 Q. You spoke earlier about how religious beliefs are
2 difficult to define and difficult to understand.

3 Do you remember that?

4 A. I do.

5 Q. You speak with many of your parishioners about their
6 religious beliefs; correct?

7 A. I do.

8 Q. You've come to understand those religious beliefs of your
9 parishioners; right?

10 A. Yes.

11 Q. Would you say that an important part of that is
12 communication from the parishioner?

13 A. Absolutely.

14 Q. The parishioner telling you, Father, I believe this
15 because that, that's the kind of conversation you have; right?

16 A. Usually, yes.

17 Q. If a parishioner said to you, Father -- strike that
18 question.

19 You testified earlier that you believed Ms. Donski's
20 religious beliefs to be sincere; correct?

21 A. I did.

22 Q. And you also testified that you came to learn that because
23 you talked to her about her religious beliefs; yes?

24 A. Yes.

25 Q. You asked questions and she gave the answer of what she

1 believed; yes?

2 A. Yes. But along with her actions and her life, I mean.

3 Q. Fair enough. She provided you lots of information for you
4 to make that assessment; right?

5 A. Absolutely.

6 Q. Okay. Because without information you can't really assess
7 somebody's sincerely held religious belief; right?

8 A. That's what I believe, yes.

9 Q. You were not present during Ms. Domski's religious
10 accommodation interview with Blue Cross; correct?

11 A. No, I was not.

12 Q. Okay. You don't know what she did or did not articulate
13 in her interview about her religious beliefs; correct?

14 A. I do not.

15 Q. So you do not know what Blue Cross used to evaluate
16 Ms. Domski's religious beliefs because you weren't there;
17 correct?

18 A. Correct.

19 MR. MOODY: That's all the questions I have.

20 Thank you.

21 THE COURT: Thank you.

22 Anything further?

23 MR. MARKO: Yes, your Honor.

24 THE COURT: All right.

25 REDIRECT EXAMINATION

1 BY MR. MARKO:

2 Q. So let's talk a little bit about some of these questions
3 you were asked.

4 Specifically I'm going to show you Defendant's
5 Exhibit 206, where it says: As a Christian I live every day
6 through my faith in God and the Bible which I believe to be
7 God's revealed and inspired word.

8 And then it talks about the Apostle Paul.

9 What's an apostle?

10 MR. MOODY: Your Honor, I'm going to object. This
11 is outside the scope of my cross.

12 MR. MARKO: He asked specifically questions about
13 conveying information to Blue Cross and that -- a Catholic
14 versus Christian and whether that identifies specific things.

15 THE COURT: Yeah. You're on the edge. I'll let
16 you inquire a little bit, but keep it quick.

17 MR. MARKO: Fair enough.

18 BY MR. MARKO:

19 Q. What's an apostle?

20 A. An apostle in the strictest sense of the word would be the
21 twelve men that Jesus called to accompany him during his life.

22 Q. Are they associated often with Catholicism?

23 A. Yes.

24 THE COURT: Is Paul an apostle?

25 THE WITNESS: Well, Paul claimed to be an apostle

1 outside the normal course, because technically he was not
2 called by Jesus. He was -- he had his conversion when he was
3 knocked off his horse after Christ had already died and rose
4 from the grave. So technically, he is not one of the twelve,
5 no.

6 BY MR. MARKO:

7 Q. But he was Saul?

8 A. Right. He called himself an apostle outside the normal
9 course of things.

10 Q. And why did he do that?

11 MR. MOODY: Your Honor, I'm going to object to this
12 line of questioning. It's just not --

13 MR. MARKO: I'll withdraw it and move on, Judge.

14 THE COURT: Thank you.

15 MR. MARKO: I'll withdraw it and move on. All right.

16 BY MR. MARKO:

17 Q. So when you talked about this discussion with Lisa,
18 you were asked questions about that.

19 Was it -- when you have discussions about people's
20 internal religious beliefs, are they often intensely personal
21 and private discussions?

22 A. Yes.

23 Q. Was the discussion that you had with Lisa a private
24 discussion?

25 A. The discussion about the vaccine?

1 Q. Yes.

2 A. Yes.

3 Q. Like, for example, was your Bodman lawyer there --

4 A. No.

5 Q. -- when you were talking about religious beliefs?

6 A. No.

7 Q. How about the Human Resources Department from Our Lady of
8 Sorrows, were they there?

9 A. No.

10 Q. Why not?

11 A. Well, it would be a private matter. I would never discuss
12 that with other people present. It was -- it was Lisa and I.

13 It wasn't in person. It was, you know, over the
14 phone or through text. But, you know, we live a distance away
15 from each other.

16 Q. And then you were asked, Father, about the teachings of
17 the Archdiocese. Okay? Let me ask you some questions related
18 to that.

19 Does the Catholic Church teach that a person may be
20 required to refuse a vaccination if it goes against their own
21 personal conscience?

22 A. Yes.

23 Q. Why?

24 A. Because the Church respects the conscience of individuals
25 to make that informed decision. As priests we were not

1 mandated to take the vaccine. The Archbishop encouraged us,
2 but he said, guys, I'll leave it up to you. You have to make
3 your own decision.

4 Q. Is vaccination according to the Catholic Church morally --
5 a moral obligation; in other words, you have to do? You have
6 to do it?

7 A. In this matter, as far as I know, no. I don't think it
8 ever has been, but I could be wrong on that. But in this
9 matter, it was very clear that there is no -- no absolute moral
10 obligation to take the vaccine; that we would encourage them,
11 but they can make their decision based on their conscience.

12 Q. Does the Catholic Church inform you and its parishioners
13 that there is a moral duty to refuse the use of medical
14 products, including vaccines, that are created using aborted
15 fetal cells?

16 A. Can you state the beginning of the question again?

17 Q. Is there a moral duty to refuse the use of certain medical
18 products?

19 MR. MOODY: I'm going to object. Outside the scope
20 to the extent other medical products is the question. I heard
21 vaccines.

22 MR. MARKO: We're talking about vaccines.

23 THE COURT: Yeah. Just withdraw that question and
24 restate it, if you would, please.

25 MR. MARKO: Understood, Judge.

1 BY MR. MARKO:

2 Q. Is it in line with the Catholic Church, is it acceptable
3 for a parishioner to refuse a medical product such as a
4 vaccine, we will talk specifically about vaccines, if there
5 is fetal cells used in the production of the vaccine?

6 A. So my answer, yes, would mean that they could morally
7 object? Am I understanding that right?

8 Q. Yes, sir.

9 A. Yes. So the Church --

10 Q. Why? Why?

11 A. Because, again, the Church respects the conscience of the
12 individual to make that decision. And in this matter for sure
13 there was no mandate that you must receive as a Catholic.

14 Q. So I understand you, the Catholic Church, had no vaccine
15 mandate?

16 A. As far as I know, no. I mean, they highly encouraged and
17 they did tell Catholics that it would be morally acceptable to
18 use the vaccine, even though it had fetal parts or made from
19 fetal parts, if I'm understanding how that process worked, but
20 again, that there was no mandate that they must.

21 Q. And was it always taught that your conscience must guide
22 you above all?

23 A. Yes.

24 MR. MARKO: Thank you, Father.

25 I don't have any other questions.

1 THE COURT: Anything else?

2 MR. MOODY: No, Judge. Thank you.

3 THE COURT: Thank you. Reverend Ptak, thank you.

4 You are excused.

5 THE WITNESS: Thank you.

6 THE COURT: Members of the jury, I think according to
7 our schedule, we were breaking today at 12:30 and it is 12:28,
8 so we will end the session today.

9 Tomorrow we will start at 10:30, so I would like
10 you to be in the jury assembly room sometime between 10:00 and
11 10:15. That's on the fifth floor. And then we will bring you
12 up to our jury room here.

13 Please do not discuss the case among yourselves. I'm
14 going to be telling you this a lot. But don't try to gather
15 any information on your own. And don't let anybody talk to
16 you about the case. And don't discuss the case with others
17 outside the courtroom.

18 Have a good rest of the day.

19 If you haven't voted, I encourage you to do that.
20 And you should have enough time tomorrow before court to do
21 that and also after our session before the polls close in
22 the afternoon tomorrow as well.

23 Have a good afternoon. Be safe.

24 Would you escort the jury out, please?

25

1 THE CLERK: All rise for the jury.

2 (Jury left courtroom at 12:29 p.m.)

3 THE COURT: From the plaintiff, anything further for
4 the record today before we close it today?

5 MR. MARKO: No, your Honor.

6 THE COURT: Defendant?

7 MR. MOODY: Nothing, your Honor. Thank you.

8 THE COURT: All right. Court is in recess. I would
9 like to see counsel at the bench.

10 (Proceedings adjourned at 12:30 p.m.)

11 * * *

12

13 **CERTIFICATE OF COURT REPORTER**

14

15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter.

17

18 s/ Rene L. Twedt

19 RENE L. TWEDT, CSR-2907, RDR, CRR, CRC
20 Federal Official Court Reporter

November 4, 2024

Date

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